Page 33 WATERHOUSE - 10-19-21 1 collectively as the retail funds; is that okay? Α. 3 Okav. Each of the retail funds is governed 4 0. 5 by a board; correct? 6 Α. Yes. 7 And do you know the people who serve Q. on the boards of the retail funds? 8 9 MS. DANDENEAU: Objection to form. Α. I don't know all of them. 10 Do you know whether the same people 11 Q. serve on the board of each of the retail funds 12 13 as we've defined that term? 14 Which -- so when you say "retail 15 funds" -- again, I want to be -- what retail funds are you referring to, because there are 16 -- there are several distinctions? 17 What retail funds are you using when 18 19 you refer to them? 20 That is why -- that is why I tried Ο. to define the terms. So let me do it again. 21 22 Retail funds for the purposes of this deposition means any retail fund to which 23 24 either of the advisors provides advisory 25 services. Okay?

```
Page 34
                   WATERHOUSE - 10-19-21
 1
          Α.
                 Okay.
                 Okay. So do you know whether the
 3
          Ο.
     same people serve on the board of each of the
 4
     retail funds?
 5
 6
          Α.
                 I don't know.
 7
                 Were you ever employed by any of the
          Q.
     retail funds?
 8
 9
          Α.
                 No.
10
                 No?
          Q.
          Α.
11
                 No.
                 Okay. Do you have any title with
12
          Q.
13
     respect to any of the retail funds?
14
          Α.
                 Yes.
15
          Q.
                 What titles do you hold --
     withdrawn.
16
                 Do you have the same titles with
17
     respect to all of the retail funds or do
18
19
     they -- or just something else?
20
                 MS. DANDENEAU: Objection to form.
                 Withdrawn.
21
          Q.
22
                 Do you have the same title with
     respect to each of the retail funds?
23
24
          Α.
                 No.
25
                 Tell me which title you have with
          Q.
```

Page 35 WATERHOUSE - 10-19-21 1 respect to each retail fund. Actually, let's do it a different 3 I withdraw the question. 4 5 Can you give me one title you have 6 in relation to any retail fund? 7 Α. Yes. What title -- what title can you 8 Ο. give me? 9 10 Principal executive officer. Α. Do you serve as principal executive 11 Ο. officer for each of the retail funds? 12 13 Α. No. 14 Q. Can you identify for me the retail 15 funds in which you serve as the principal executive officer? 16 Highland Funds 1, Highland 17 Yes. Funds 2, Highland Income Fund, Highland Global 18 Allocation Fund. 19 20 I'm sorry, you said "Global Ο. Allocation Fund"? 21 22 Α. Yes. 23 VIDEOGRAPHER: Excuse me, 24 Mr. Morris. This is the videographer. concerned about the lighting in the 25

```
Page 36
                  WATERHOUSE - 10-19-21
 1
          witness' camera.
                Do you want to go off the record and
 3
          make some adjustments?
 4
                MR. MORRIS: Sure, but just for this
 5
 6
          purpose. I don't want to take a break.
 7
          just started.
                MS. DANDENEAU: Yeah, that is fine.
 8
 9
          That is fine. We're going to put you on
10
          mute.
                MR. MORRIS: All right.
11
                MS. DANDENEAU: I'm going to try to
12
13
          open up some of the shades.
                VIDEOGRAPHER: We're going off the
14
15
          record at 10:08 a.m.
          (Recess taken 10:08 a.m. to 10:11 a.m.)
16
                VIDEOGRAPHER: We are back on the
17
18
          record at 10:11 a.m.
                Mr. Waterhouse, when did you become
19
          Ο.
20
     the principal executive officer of the four
     retail funds that you just identified?
21
                I don't recall.
22
          Α.
                Do you recall the approximate year
23
          Ο.
24
     that you became the principal executive officer
     of the four funds?
25
```

```
Page 37
                   WATERHOUSE - 10-19-21
 1
          Α.
                 2021.
                 Did you ever hold any title with
 3
          Ο.
     respect to any of the four funds you have just
 4
     identified other than principal executive
 5
     officer?
 6
 7
          Α.
                 I don't recall.
                 Is it possible that you held a
 8
          Ο.
     position or a title with the four funds you
 9
     just identified prior to 2021?
10
          Α.
11
                 Yes.
                 But you don't recall if you did or
12
          Q.
13
     not; do I have that right?
                     You -- I thought you asked, did
14
          Α.
15
     I hold other titles.
                 Did you hold any title at the four
16
          Ο.
     retail funds for which you now serve as
17
     principal executive officer at any time prior
18
     to 2021?
19
20
          Α.
                 Yes.
                 What titles did you hold?
21
          Q.
22
                 I don't recall all the titles.
          Α.
23
                 Do you recall any of the titles?
          Q.
24
          Α.
                 Yes.
25
                 What titles do you recall holding at
          Q.
```

Page 38 WATERHOUSE - 10-19-21 1 those four retail funds before 2021? Α. Principal executive officer. 3 Were you the principal executive 4 Ο. officer of the four retail funds that you have 5 identified? 6 7 Sorry, could you repeat the Α. question? 8 Were you the principal executive 9 Q. officer for each of the four retail funds that 10 you have identified? 11 Α. 12 Yes. When did you become the principal 13 Ο. 14 executive -- withdrawn. Can you give me the approximate year 15 that you became the principal executive officer 16 for each of the four retail funds you've 17 identified? 18 I don't recall. 19 Α. 20 Ο. What are your duties and responsibilities as the principal executive 21 officer of these four retail funds? 22 It is to manage the finance and 23 Α. 24 accounting positions. 25 So at the same time you serve as the Q.

Page 39 WATERHOUSE - 10-19-21 1 treasurer of the advisors, you also serve as the principal executive officer of these four 3 retail funds; correct? 4 5 Α. Yes. Did you ever hold any title with 6 Ο. 7 respect to any other retail fund? Α. Not that I recall. 8 During the period that you served as 9 Q. Highland's CFO, from time to time Highland 10 loaned money to certain of its officers and 11 employees; correct? 12 13 Α. Yes. 14 Q. During the period that you served as Highland's CFO, from time to time Highland 15 loaned money to certain --16 Let me -- let me retract that, 17 sorry, that -- you asked during the time I was 18 19 CFO, Highland loaned moneys to employees. 20 don't -- I don't recall that during my tenure of CFO. 21 22 You have no recollection during the Ο. time that you were the CFO of Highland of 23 24 Highland ever loaning any money to any officer or director of Highland? 25

Page 40

- 1 WATERHOUSE 10-19-21
 - 2 A. I don't recall during my tenure of
 - 3 Highland or my -- as CFO of Highland -- yeah,
- 4 if there are any loans as CFO of Highland.
- 5 Q. I'm just talking about officers and
- 6 employees right now. You have no recollection
- 7 of Highland ever making a loan to any of its
- 8 officers or employees during the time that you
- 9 served as CFO. Do I have that right?
- 10 MS. DANDENEAU: Objection to form.
- 11 A. So I thought you were saying
- officers and employees as CFO, right, so there
- 13 were -- I mean, okay, yes.
- 14 Q. I would ask you to listen carefully
- 15 to my question. If I -- if I'm not clear, let
- 16 me know, but I'm really trying to be as clear
- 17 as I can.
- 18 A. I'm listening as carefully as I can,
- 19 and you are asking very specific questions in a
- 20 timeline. And I'm trying to answer your
- 21 questions as specifically as I can, and I
- 22 apologize if -- if I'm going back. I am -- you
- 23 are asking very specific questions. Thank you.
- Q. During the period that you served as
- 25 Highland's CFO, from time to time Highland

Page 41 WATERHOUSE - 10-19-21 1 loaned money to certain corporate affiliates; correct? 3 MS. DANDENEAU: Objection to form. 4 5 Α. What are corporate affiliates? 6 0. How about the ones that are in 7 Highland's audited financial statements under the section entitled Loans to Affiliates. Why 8 don't we start with those. Do you have any 9 understanding of what the phrase "affiliates" 10 11 means? MS. DANDENEAU: Objection to form. 12 13 Α. I understand what affiliates are, 14 yet affiliates can have different meanings in 15 different contexts, so... Why don't you -- why don't you tell 16 Ο. me what your understanding of the term 17 "affiliate" is in relation to Highland Capital 18 19 Management, L.P. 20 Α. Is that a -- it depends on the 21 context. 22 How about the context of making 0. loans? 23 Objection to form. 24 MS. DANDENEAU: 25 I didn't make the determination of Α.

Page 42 WATERHOUSE - 10-19-21 1 who an affiliate was or is at the time those --I didn't -- that wasn't my job to make a 3 determination of who an affiliate is. 4 5 All right. So as the CFO of Ο. 6 Highland, do you have any ability right now to 7 tell me which companies that were directly or indirectly owned and/or controlled by 8 Mr. Dondero in whole or in part received loans 9 from Highland Capital Management, L.P.? 10 MS. DANDENEAU: Objection to form. 11 MS. DEITSCH-PEREZ: Objection, form. 12 13 Α. Yes. 14 Q. Okay. Identify every entity that 15 you can think of that was directly or indirectly owned and/or controlled by 16 Mr. Dondero in whole or in part that received a 17 18 loan from Highland Capital Management, L.P. 19 MR. RUKAVINA: Objection, legal 20 conclusion. NexPoint Advisors, Highland Capital 21 Α. 22 Management Fund Advisors, HCM Services, Dugaboy. Sorry, I don't think -- Dugaboy 23 24 doesn't fit that definition. You said owned and controlled. I don't think that that 25

```
Page 43
 1
                  WATERHOUSE - 10-19-21
 2.
     definition --
                I said owned and/or controlled.
 3
          Ο.
          Α.
                I don't -- again, I'm not -- I'm not
 4
 5
     the legal expert. I don't think it controls --
 6
     he controls Dugaboy, so again, I'm not the
 7
     legal person.
                I'm not asking you for a legal
 8
          Ο.
     conclusion, sir. I'm asking you for your
 9
     knowledge, okay, as the CFO -- the former CFO
10
     of Highland Capital Management, other than
11
     NexPoint, HCMFA, and HCMF -- HCMS, can you
12
13
     think of any other entities that were owned
14
     and/or controlled directly or indirectly in
15
     whole or in part by Jim Dondero who received a
     loan from Highland Capital Management, L.P.?
16
17
                MS. DANDENEAU: Objection to form.
18
          Α.
                HCRE.
19
                Any others?
          Ο.
                That is -- that is all I can think
20
          Α.
     of.
21
22
                And you're aware that from time to
          Ο.
     time while you were the CFO, Highland loaned
23
24
     money to Jim Dondero; correct?
25
          Α.
                Yes.
```

Page 44 WATERHOUSE - 10-19-21 1 Q. Okay. Can we refer to the four entities that you just named and Mr. Dondero as 3 the affiliates? 4 5 Α. So that would be Jim Dondero, 6 NexPoint Advisors, Highland Capital Management 7 Fund Advisors, and HCRE. And HCMS? 8 Ο. And HCMS, okay. 9 Α. And can we refer to the loans that 10 Ο. were given to each of those affiliates as the 11 affiliate loans? 12 13 Α. Yes. 14 Q. And is it fair to say that each of 15 the affiliates were the borrowers under the affiliate loans as we're defining the term? 16 17 MR. RUKAVINA: Objection, legal conclusion. 18 The borrowers are whoever were on 19 Α. 20 the notes. I don't -- I don't know. I'm not 21 the legal person. 22 Ο. But you --23 Α. I don't know. 24 You do know, as Highland's former Ο. CFO, that each of the affiliates that you have 25

```
Page 45
                  WATERHOUSE - 10-19-21
 1
 2.
     identified tendered notes to Highland; correct?
                MR. RUKAVINA: Hey, John, will you
 3
          just give me a running objection to legal
 4
          conclusion to HCM --
 5
 6
                MR. MORRIS: No. No, if you want to
 7
          object --
                MR. RUKAVINA: I will object every
 8
 9
          time. Object to legal conclusion.
10
                MR. MORRIS: That is fine.
                Sorry, can you repeat the question?
11
          Α.
12
          Q.
                Are you aware that each of the --
13
     that each of the affiliates, as we have defined
     the term, gave to Highland a promissory note in
14
15
     exchange for the loans?
                MR. RUKAVINA: Objection to the
16
          extent that calls for a legal conclusion.
17
                I don't.
18
          Α.
19
                No, you don't know that?
          Ο.
                No, they didn't -- you said they
20
          Α.
     exchanged a promissory note for a loan. I
21
22
     don't -- I don't understand that question, so I
     said no.
23
24
                At the time of the bankruptcy
          Ο.
25
     filing, did Highland have in its possession
```

```
Page 46
                  WATERHOUSE - 10-19-21
 1
     promissory notes that were signed by each of
     the affiliates?
 3
          Α.
 4
                Yes.
 5
                To the best of your knowledge,
          Ο.
 6
     during the time that you served as Highland's
 7
     CFO, did Highland disclose to its outside
     auditors all of the loans that were made to
 8
 9
     affiliates?
10
                MR. RUKAVINA: Objection, that calls
          for a legal conclusion.
11
                MS. DEITSCH-PEREZ: I also couldn't
12
13
          hear you, John, because there was some
14
          garbling on -- on the -- on the call.
15
                MR. MORRIS: Folks, I've got to tell
          you this is not going well, and I'm
16
          reserving my right --
17
                MS. DANDENEAU: John, it was just
18
19
          the end of that question. It was just the
20
          end of that question. I couldn't hear it
                  Sorry, if you could repeat it,
21
22
          please.
23
                MR. MORRIS: That is less than an
24
          hour into this, but folks are trying to run
          out the clock, and so I'm just going to
25
```

```
Page 47
                  WATERHOUSE - 10-19-21
 1
          state that now.
                MS. DANDENEAU: You know, and,
 3
          Mr. Morris, I really object to that.
 4
                                                  Ι
 5
          mean --
                MR. MORRIS: Okay.
 6
 7
                MS. DANDENEAU: -- Mr. Waterhouse
          just told you he's trying to listen to your
 8
 9
          questions and answer them carefully, and
          you have no basis for saying that.
10
11
                MR. MORRIS:
                              Okay.
                MS. DANDENEAU:
                                 This does not --
12
13
          this is not an experienced witness, so he's
14
          trying to do the best he can.
15
                Mr. Waterhouse, during the time that
          Ο.
     you served as Highland's CFO, did Highland
16
     disclose to its outside auditors all of the
17
     loans that it made to each of the affiliates
18
19
     that you have identified?
20
                MR. RUKAVINA: Objection, legal
          conclusion.
21
22
          Α.
                Yes.
                To the best of your knowledge, while
23
          Q.
     you were Highland's CFO, were all of the
24
     affiliate loans described in Highland's audited
25
```

```
Page 48
 1
                  WATERHOUSE - 10-19-21
     financial statements?
                MR. RUKAVINA: Objection, legal
 3
          conclusion.
 4
                When an audit was performed, any
 5
          Α.
 6
     loans that were made by Highland to the
 7
     affiliates were disclosed to auditors.
                Are you aware of any loan that was
          Ο.
     made to any affiliate that was not disclosed to
 9
10
     the auditors?
          Α.
                I'm not aware.
11
                To the best of your knowledge, did
12
          Q.
13
     each of the affiliates who were --
     (inaudible) -- loaned from Highland execute a
14
15
     promissory note in connection with that loan?
16
                MR. RUKAVINA: Objection, legal
17
          conclusion.
                Sorry, you -- halfway through the
18
          Α.
19
     question it got muffled.
20
                Can you repeat that again?
                To the best of your knowledge, did
21
          Ο.
22
     every affiliate execute a promissory note in
     connection with each loan that it obtained from
23
24
     Highland?
25
                MR. RUKAVINA: Objection, legal
```

```
Page 49
 1
                   WATERHOUSE - 10-19-21
          conclusion.
          Α.
                 Yes.
 3
                 You are not aware of any loan that
 4
          Ο.
     any affiliate ever obtained from Highland where
 5
 6
     the affiliate did not give a promissory note in
 7
     return; is that fair?
          Α.
                 Yes, I'm not aware.
 8
                 And to the best of your knowledge,
 9
          Q.
     did Highland loan to each affiliate an amount
10
     of money equal to the principal amount of each
11
     promissory note?
12
13
                 MR. RUKAVINA: Objection, legal
          conclusion.
14
15
          Α.
                 Yes.
                 During the time that you served as
16
          Ο.
     CFO, did Highland ever loan money to
17
     Mark Okada?
18
                 I -- I don't recall.
19
          Α.
20
          Ο.
                Did you ever see any promissory
     notes executed by Mark Okada?
21
22
                 I don't recall.
          Α.
                 Do you know if Highland ever forgave
23
          Ο.
24
     any loan that it ever made to Mr. Okada?
25
                 I don't recall.
          Α.
```

Page 50 WATERHOUSE - 10-19-21 1 Do you recall if Mr. Okada paid back Q. all principal and interest due and owing under 3 any loan he obtained from Highland? 4 MS. DEITSCH-PEREZ: Objection to 5 6 form. 7 MS. DANDENEAU: Objection to form. Α. I don't recall. 8 9 Do you recall whether -- during your Q. time as CFO, whether Highland ever loaned money 10 to Jim Dondero? 11 12 Α. Yes. 13 Ο. To the best of your knowledge, did 14 Mr. Dondero sign and deliver to Highland a 15 promissory note in connection with each loan 16 that he obtained from Highland? If you are referring to the 17 Α. promissory notes that, you know, part of 18 19 Highland's records, yes. 20 Okay. You're not aware of any loan Ο. that Mr. Dondero took from Highland that wasn't 21 22 backed up by -- by a promissory note with a face -- with a principal amount equal to the 23 24 amount of the loan; correct? 25 Am I aware that Jim Dondero took a Α.

Page 51 WATERHOUSE - 10-19-21 1 loan? 2. Without giving a -- let me ask a 3 Ο. better question. I'm sorry, Mr. Waterhouse. 4 5 Are you aware of any loan that 6 Mr. Dondero obtained from Highland where he 7 didn't give a promissory note in return? Α. I'm not aware. 8 9 Q. During the time that you served as Highland's CFO, did Highland ever forgive any 10 loans, in whole or in part, that it made to 11 Mr. Dondero? 12 13 Α. Not that I'm aware. 14 Q. At the time that you served as 15 Highland's CFO, did Highland ever forgive any loan, in whole or in part, that it made to any 16 affiliate as we've defined the term today? 17 18 Α. Not that I'm aware. 19 During the time that you served as Ο. 20 Highland's CFO, did Highland ever forgive, in whole or in part, any loan that it ever made to 21 22 any officer or employee? Highland forgave loans to officers 23 Α. 24 and employees. It may not have been at the time when my title was CFO. 25

Page 52 WATERHOUSE - 10-19-21 1 Q. Okay. And so I appreciate the distinction. 3 Is it fair to say that, to the best 4 5 of your knowledge, Highland did not forgive a 6 loan that it made to an officer or employee 7 after 2013? MS. DANDENEAU: Objection to form. 8 Α. I don't recall. 9 To the best of your knowledge, did 10 Ο. Highland disclose to its auditors every 11 instance where it forgave, in whole or in part, 12 13 a loan that it had made to one of its officers 14 or employees? 15 Α. No. 16 Ο. Can you think of -- can you -- can you identify any loan to an officer or employee 17 that was forgiven by Highland, in whole or in 18 19 part, that was not disclosed to Highland's outside auditors? 20 Look, I don't recall all of the 21 Α. loans and the loan forgiveness. I just know as 22 part of the audit process there is a 23 24 materiality concept. 25 So if there were loans to employees

Page 53 WATERHOUSE - 10-19-21 1 that were of -- you know, that were deemed immaterial, those items may not have been 3 disclosed by the team to the auditors. 4 5 I appreciate that. Ο. 6 Do you have an understanding as to 7 what the level of materiality was? I don't recall. Α. 8 As the CFO of Highland, to the best 9 Q. of your knowledge, did Highland disclose to its 10 outside auditors every loan that was forgiven, 11 in whole or in part, that was material as that 12 13 term was defined by the outside auditors? 14 Α. Yes. 15 And do you recall where -- do you Ο. recall where the definition of materiality can 16 be found for -- for this particular purpose? 17 MS. DANDENEAU: Objection to form. 18 You -- I don't determine 19 Α. No. 20 materiality. Okay. I'm just asking you if you 21 Ο. 22 can help me understand where it is, but I think we will find it in a few minutes. 23

commenced lawsuits against each of the

24

25

You are aware that Highland has

Page 54 WATERHOUSE - 10-19-21 1 affiliates, as we've defined the term, to collect under certain promissory notes; is that 3 right? 4 5 Α. Yes. 6 Ο. And are you familiar with the notes 7 that are issue -- at issue in the lawsuits? MS. DANDENEAU: Objection to form. 8 Α. Generally familiar. 9 Can we refer to the lawsuits that 10 Ο. Highland has commenced against the affiliates 11 collectively as the lawsuits? 12 13 Α. Yes. And, again, the affiliates are 14 NexPoint, HCMFA, HCMS, and HCRE. 15 Ο. And Mr. Dondero? 16 Α. Okay. See, that is a new -- and now Mr. Dondero is included in your affiliate 17 definition. 18 19 0. I just --20 Α. I thought affiliates -- I thought affiliates were just the four prior entities, 21 22 so I just want to be clear. I appreciate that. So let's --23 Q. 24 let's keep them separate and let's refer to the four corporate entities as the affiliates, and 25

Page 55 WATERHOUSE - 10-19-21 1 Mr. Dondero we will call Mr. Dondero. Okay? Α. Okay. Thank you. As you can see, 3 Mr. Morris, there is a lot of entities -- a lot 4 5 here. I just want to be clear. 6 0. Okay. Now, the affiliates of Mr. Dondero signed promissory notes that are 7 not subject to the lawsuit. 8 9 Do you understand that? 10 MS. DANDENEAU: Objection to form. Α. The affiliates and Mr. Dondero 11 signed --12 You know what? I will skip it. 13 Ο. That is okay. Okay. 14 15 From time to time while you were Highland's CFO, payments were applied against 16 principal and interests that were due under the 17 notes that were tendered by the affiliates and 18 Mr. Dondero; correct? 19 20 MR. RUKAVINA: Objection to the extent that calls for a legal conclusion. 21 22 Α. Yes. Did Highland have a process where --23 Q. 24 whereby payments would be applied against principal and interest against the notes that 25

Page 56 WATERHOUSE - 10-19-21 1 were given by the affiliates and Mr. Dondero? Α. Yes. 3 Can you describe the process for me? 4 Ο. 5 The process, payment should be Α. 6 applied as laid out in the -- in the promissory 7 note. From time to time were payments made 8 Ο. that were not required under the promissory 9 notes? 10 MS. DANDENEAU: Objection to form. 11 Α. 12 Yes. 13 Who was responsible for deciding Ο. 14 when and how much the payments would be made 15 with respect to each of the notes that were issued by the affiliates and Mr. Dondero? 16 Who was responsible for deciding how 17 Α. much was paid prior to the due date? 18 19 Q. Yes. 20 Α. I don't know. Did you approve of each payment that 21 Q. was made against principal and interest on the 22 notes that were given by the affiliates and 23 24 Mr. Dondero? 25 MS. DANDENEAU: Objection to form.

Page 57 WATERHOUSE - 10-19-21 1 Α. Did I approve the payments? approve -- I approve -- if there was cash -- if 3 there was cash being repaid on a note payment, 4 yes, I approved in the general sense of being 5 6 made aware of the payment and the amount. 7 And are you the person who authorized Highland's employees to effectuate 8 9 those payments? 10 Yes. Α. When you gave the instruction to 11 Ο. effectuate the payment, did you obtain 12 13 Mr. Dondero's prior approval? 14 Α. I mean, it -- I mean, it -- it 15 depends. Can you think of any instance where 16 Ο. you directed Highland's employees to make a 17 payment of principal or interest against any 18 note that was tendered by an affiliate or 19 20 Mr. Dondero that Mr. Dondero did not approve of in advance? 21 22 I can't recall specifically. Α. Can you identify -- withdrawn. 23 Q. 24 Did Mr. Dondero ever tell you that a 25 payment that was made against principal and

Page 58 WATERHOUSE - 10-19-21 1 interest due under one of the notes that was 2. tendered by an affiliate or himself should not 3 have been made? 4 5 Α. Yes. 6 Ο. Can you identify the payment for me? 7 It would be for -- for NexPoint Α. Advisors. 8 Okay. And when did Mr. Dondero tell 9 Q. you that a payment that you had initiated on 10 behalf of NexPoint should not have been made? 11 I wasn't initiating payment. It was 12 Α. 13 in the context of the -- I think you used this 14 term, "the advisors," so NexPoint Advisors and 15 Highland Capital Management Fund Advisors had overpaid on certain agreements with Highland 16 17 Capital Management, L.P. And as a part of that process, the advisors -- what I was told at the 18 19 time were in talks and negotiations and 20 discussions with Highland Capital Management, L.P., on offsets in relation to those 21 22 overpayments. When did this conversation take 23 Ο. 24 place? 25 MS. DANDENEAU: Objection to form.

```
Page 59
                   WATERHOUSE - 10-19-21
 1
          Α.
                I don't recall specifically.
                Do you recall what year it was?
 3
          Ο.
          Α.
 4
                Yes.
 5
                What year did the conversation with
          0.
 6
     Mr. Dondero take place that you just described?
 7
          Α.
                2020.
                Okay. Do you remember if it was
 8
          Ο.
 9
     December 2020?
10
          Α.
                It -- it -- I don't -- I don't
     recall what month specifically, but it would
11
     have been November or December.
12
                And we're talking here about a
13
          Ο.
     payment of principal and/or interest that was
14
15
     due -- withdrawn.
16
                We're talking here about a payment
     of principal and interest that was applied
17
     against NexPoint's note; correct?
18
19
                MS. DANDENEAU: Objection to form.
20
          Α.
                I don't recall what that payment
     consisted of.
21
22
                Is it possible that the payment you
          Ο.
     have in mind related to the shared services
23
24
     agreement?
25
                MS. DANDENEAU: Objection to form.
```

```
Page 60
                  WATERHOUSE - 10-19-21
 1
          Α.
                No.
                Are you certain that the payment --
 3
          Ο.
     that the payment that you have in mind related
 4
 5
     to the promissory note that NexPoint issued in
 6
     favor of Highland?
 7
                MS. DANDENEAU: Objection to form.
          Α.
 8
                Yes.
 9
                Okay. Other than that one payment,
          Q.
     can you identify any other instance where
10
     Mr. Dondero told you that a payment should not
11
     have been applied against principal and
12
13
     interest under any promissory note tendered by
     any affiliate or Mr. Dondero?
14
15
                MS. DANDENEAU: Objection to form.
16
                MS. DEITSCH-PEREZ:
                                     Objection to
          form.
17
                Not that I recall.
18
          Α.
19
                Thank you very much.
          Ο.
20
                Do you know if Mr. Dondero approved
     in advance of each loan made to each affiliate
21
     and himself during the time that you were the
22
     CFO?
23
24
                MS. DEITSCH-PEREZ: Object to the
25
          form.
```

Page 61 WATERHOUSE - 10-19-21 1 Α. Yes, generally. Can you identify any loan that was 3 Ο. ever made to an affiliate or to Mr. Dondero 4 that Mr. Dondero did not approve of in advance? 5 6 Α. Other than the ones that are in 7 dispute, I'm not aware. Do you believe that Mr. Dondero did 8 Ο. not approve of each of the loans that are in 9 dispute in advance of the time that the loan 10 was made? 11 MS. DANDENEAU: Objection to form. 12 13 Α. Given what is in the dispute, you 14 know, and -- and -- and the way things might --15 yeah, I mean... I am not asking about the dispute, 16 Ο. and it was probably my mistake to follow you 17 18 there. 19 Were you aware of every loan made by 20 Highland to each of its affiliates and Mr. Dondero while you were the CFO at the time 21 each loan was made? 22 Was I aware of every loan, yes. 23 Α. 24 Okay. And if you put yourself back Ο. in time, do you recall that any of the loans 25

Page 62 WATERHOUSE - 10-19-21 1 that were made to one of the affiliates or Mr. Dondero during the time that you were the 3 CFO was made without Mr. Dondero's prior 4 5 knowledge and approval? 6 Α. Not that I recall. 7 Thank you. In fact, do you -- as Q. the CFO, would you have allowed Highland to 8 loan money to an affiliate or to Mr. Dondero 9 without obtaining Mr. Dondero's prior approval? 10 MS. DANDENEAU: Objection to form. 11 12 Α. I can't -- there was so many times 13 over the years, I can't speak for every single one, but generally, yes, I -- I spoke to him. 14 15 You -- you never -- you never --Q. withdrawn. I will just take that. 16 Can you recall any payment that was 17 ever made against principal and interest on a 18 19 note that was issued in favor of Highland by an 20 affiliate or Mr. Dondero that you personally did not know about in advance? 21 There are so many through the years, 22 Α. 23 I don't -- I don't -- I don't recall every 24 single one.

25

Q.

Okay. Can you identify any payment

Page 63 WATERHOUSE - 10-19-21 1 that was made against principal and interest on any note tendered by any affiliate or 3 Mr. Dondero that you didn't know about in 4 5 advance? I don't recall. 6 Α. 7 Other than Mr. Dondero -- withdrawn. Q. Did anybody at Highland have the 8 authority to make a payment against principal 9 and interest due under a loan given to the 10 affiliates and Mr. Dondero without your 11 knowledge and approval? 12 13 MS. DANDENEAU: Objection to form. Sorry, there was -- to make a 14 Α. 15 payment on an affiliate loan, what you are saying would it require my knowledge and 16 17 approval, yes. 18 Ο. Okay. I appreciate that. Thank 19 you. 20 Did anybody at Highland have the authority, to the best of your knowledge, to 21 effectuate a loan to an affiliate without 22 23 Mr. Dondero's prior knowledge and approval? 24 MS. DANDENEAU: Objection to form. 25 Α. I can't speak for all, but

Page 64 WATERHOUSE - 10-19-21 1 generally, yes. 2. Did you personally communicate with 3 Mr. Dondero to let him know each time a payment 4 5 of principal or interest was being made against 6 any note that was tendered by an affiliate or Mr. Dondero to Highland? 7 I don't -- are you saying, did I let 8 Α. Mr. Dondero know if a payment was made on any 9 affiliate or loan to Mr. Dondero? I mean, 10 11 not -- not every -- no. Let me ask it this way: Did you 12 Ο. 13 have a practice of informing Mr. Dondero when payments were made against principal and 14 15 interest on any note that was tendered by an affiliate or Mr. Dondero? 16 17 MS. DEITSCH-PEREZ: Objection to 18 form. MS. DANDENEAU: Objection to form. 19 20 Α. No, I did not. Did Mr. Dondero ever tell you that a 21 Ο. payment of principal or interest had been made 22 against a note that was tendered by an 23 24 affiliate or himself that he had been unaware 25 of?

```
Page 65
                  WATERHOUSE - 10-19-21
 1
                Not that I recall.
          Α.
                Are you aware that Mr. Dondero and
 3
          Ο.
     the affiliates -- withdrawn.
 4
 5
                Are you aware that Mr. Dondero
 6
     NexPoint, HCRE, and HCMS all contend that they
 7
     do not have to pay on any of the notes they
     issued because they are subject to an oral
 8
     agreement between Mr. Dondero and Nancy
 9
     Dondero, in her capacity as the trustee of the
10
     Dugaboy Investment Trust?
11
                MS. DANDENEAU: Objection to form.
12
13
          Α.
                I didn't -- I didn't -- I didn't
     know that it was all notes.
14
15
                       Are you -- did you ever learn
          Ο.
                Okay.
     that there was an oral agreement between Jim
16
     Dondero and Nancy Dondero pertaining to any
17
     notes issued by any affiliate or Mr. Dondero?
18
19
                MS. DEITSCH-PEREZ: Object to the
20
          form.
21
          Α.
                Yes.
22
                Do you have any understanding as to
          Ο.
     the terms of that agreement?
23
24
          Α.
                Yes.
                What is your understanding of the
25
          Q.
```

```
Page 66
 1
                  WATERHOUSE - 10-19-21
     terms of the agreement?
          Α.
                That there were certain milestones
 3
     that had to be reached.
 4
                Do you have any understanding of the
 5
          Ο.
 6
     terms of the agreement between Mr. Dondero and
 7
     Nancy Dondero concerning any of the notes
     issued by the affiliates or Mr. Dondero other
 8
 9
     than that there have to be milestones reached?
10
                MS. DEITSCH-PEREZ: Object to the
          form.
11
                There are milestones, I found out
12
          Α.
     yesterday, or there was some --
13
14
                MS. DANDENEAU: Okay. I'm just
15
          going to object to the extent that you
          learned anything in conversations with
16
          counsel, please don't reveal -- that is
17
          privileged, and don't reveal any privileged
18
          communications.
19
20
                THE WITNESS:
                               Okay.
                So I'm not aware of anything else.
21
          Α.
22
                Do you know what the milestones
          Ο.
23
     were?
24
                MS. DANDENEAU: Objection to form.
25
          Α.
                I don't.
```

```
Page 67
                   WATERHOUSE - 10-19-21
 1
                 Do you know anything about -- do you
          Ο.
     know what promissory notes the agreement
 3
     covered?
 4
                 I don't.
 5
          Α.
 6
          Ο.
                 Do you know if -- if Jim and Nancy
 7
     Dondero entered into one agreement or more than
 8
     one agreement?
 9
                 MS. DEITSCH-PEREZ: Object to the
10
          form.
                 I don't know.
11
          Α.
                 Do you know if the agreement is in
12
          Q.
13
     writing?
14
          Α.
                 I don't know.
15
                How did you learn of the existence
          Q.
16
     of the agreement?
17
                 MS. DANDENEAU: Objection to form.
18
          Again --
                 I don't -- I don't recall who told
19
          Α.
20
     me.
                 You have no recollection of who told
21
          Ο.
     you about this agreement between Jim and Nancy
22
     Dondero?
23
24
                MS. DEITSCH-PEREZ: Object to the
25
          form.
```

```
Page 68
                  WATERHOUSE - 10-19-21
 1
                I don't recall.
          Α.
                Do you recall how you learned of the
 3
          Ο.
 4
     agreement?
                Was it in a meeting? Was it in a
 5
 6
     phone call? Was it in an email?
 7
                I don't recall.
          Α.
                Do you recall when you learned of
 8
          Ο.
 9
     the agreement?
10
                Not specifically.
          Α.
                Do you recall what year you learned
11
          Ο.
     of the agreement?
12
13
          Α.
                In -- look, I mean, there are so
14
     many notes.
                  I may be getting -- I believe it
15
     was 2020.
                All right. I'm not asking about
16
     notes, sir. I'm asking about the agreement
17
     that you testified you knew about between Jim
18
19
     and Don- -- Nancy Dondero. Okay.
20
                Do you understand my question now?
     Should I ask my question again?
21
22
          Α.
                Yeah, sure. Go ahead.
                I'm going to use the word
23
          Ο.
24
     "agreement" to refer to the agreement that
     Mr. Dondero and Nancy Dondero entered into
25
```

```
Page 69
                   WATERHOUSE - 10-19-21
 1
     where you understood that certain milestones
     had to be reached.
                         Okav?
 3
          Α.
                Uh-huh.
 4
 5
                MS. DANDENEAU: Objection.
 6
                MS. DEITSCH-PEREZ: Object to the
 7
          form.
                MR. MORRIS: Just defining a term,
 8
 9
          what is the objection.
10
                MS. DEITSCH-PEREZ:
                                     The objection --
                MR. MORRIS: I will move on.
11
          move on.
12
13
                MS. DEITSCH-PEREZ: John --
14
          Q.
                 Sir, are you okay with that
15
     definition of agreement?
16
          Α.
                Okay.
                Okay. So you don't recall who --
17
          Ο.
     who informed you of the existence of the
18
     agreement; is that right?
19
20
          Α.
                 I don't recall.
                 You don't recall who told you the
21
          Ο.
     terms of the agreement.
22
                Do I have that right?
23
24
          Α.
                 Correct.
                And you don't recall if you learned
25
          Q.
```

```
Page 70
                   WATERHOUSE - 10-19-21
 1
     about the agreement in a meeting, through an
     email, or through a phone call.
 3
                Do I have that right?
 4
                 I don't recall.
 5
          Α.
 6
          Ο.
                 Can you tell me when you learned of
 7
     the agreement?
                 I don't -- I don't -- I don't
          Α.
 8
     remember specifically.
 9
10
                 Can you tell me if you learned of
     the agreement before or after the petition
11
12
     date?
13
          Α.
                It would have been -- it would have
     been after.
14
                 Can you tell me if you learned of
15
          0.
16
     the agreement before or after January 9th,
     2020?
17
                 It would have been after.
18
          Α.
                 Can you tell me if you learned of
19
          Ο.
     the agreement before or after you left Highland
20
     Capital Management in February of 2021?
21
                 I don't -- I don't -- I don't know.
22
          Α.
23
          Q.
                 It is possible that you learned of
24
     it while you were a Highland employee.
25
                 Do I have that right?
```

Page 71 WATERHOUSE - 10-19-21 1 Α. I don't remember the -- I mean, it was sometime in 2021. I don't remember when. 3 All right. So to the best of your 4 5 recollection, it was in 2021 but you don't 6 recall if it was before or after you ceased to 7 be a Highland employee. Do I have that right? 8 9 Α. Yeah, I mean, it was -- it was likely after I was -- after I left Highland 10 because, if I put myself back into the last 11 days of -- of 2021, it was -- you know, the 12 13 communications with Mr. Dondero were -- were --14 were -- there weren't as many communications 15 because of the circumstances. And so based on that you believe 16 Ο. that it is most likely that you learned of this 17 agreement sometime after you left Highland 18 19 employment? 20 Α. I wouldn't use the term "most I don't recall specifically. I don't 21 likelv." 22 recall. Do you recall ever telling Jim Seery 23 Ο. 24 about this agreement? 25 No, I don't -- I didn't tell Α.

```
Page 72
 1
                   WATERHOUSE - 10-19-21
 2.
     Jim Seery.
                Did you tell anybody at DSI about
 3
          Ο.
     this agreement?
 4
 5
          Α.
                No.
                Did you tell any of Highland's
 6
          Ο.
 7
     independent directors about this agreement?
          Α.
                 No.
 8
                 Did you tell anybody at Pachulski
 9
          Q.
     Stang Ziehl & Jones about this agreement?
10
          Α.
11
                 No.
                Did you tell any employee of
12
          Q.
13
     Highland about this agreement?
14
          Α.
                 No.
15
                MS. DANDENEAU:
                                 Mr. Morris, it has
16
          been an hour and a half. Is this a good
17
          time for a break?
18
                MR. MORRIS:
                              Sure.
                Mr. Waterhouse, I will just remind
19
          Ο.
20
     you that during the break please don't speak
     with anybody about the deposition, the
21
     substance of your testimony or anything else
22
     concerning the deposition. Okay?
23
24
          Α.
                 Yes.
25
                 MR. MORRIS: So it is 11:02. We're
```

```
Page 73
                  WATERHOUSE - 10-19-21
 1
          at 11:02 your time. Let's come back, I
          quess, at 15 -- at 11:15 your time.
 3
                VIDEOGRAPHER: We're going off the
 4
 5
          record at 11:02 a.m.
 6
          (Recess taken 11:02 a.m. to 11:20 a.m.)
 7
                VIDEOGRAPHER: We are back on the
          record at 11:20 a.m.
 8
 9
                Mr. Waterhouse, did you speak with
          Q.
     anybody during the break about this deposition?
10
          Α.
11
                No.
                MS. DANDENEAU: Other than -- other
12
13
          than his counsel.
14
                Did you speak to your counsel about
          Ο.
15
     the substance of your deposition today?
16
          Α.
                No, I didn't bring it up.
                I didn't ask you if you brought it
17
          Ο.
          I asked you if you had any conversation
18
     with your lawyer about the substance of your
19
20
     deposition.
                MS. DANDENEAU: Yes, he did.
21
22
          Ο.
                Can you tell me what the -- you
     discussed?
23
24
                MS. DANDENEAU: No, I object to
25
          that. He's not going to answer. That is a
```

```
Page 74
             WATERHOUSE - 10-19-21
 1
     privileged conversation.
           MR. MORRIS: So I just want to make
 3
     sure that I understand. During the break
 4
 5
     you spoke with your client about the
 6
     substance of this deposition; is that
 7
     right?
 8
           MS. DANDENEAU: Yes, John.
           MR. MORRIS: And you refuse -- you
 9
     refuse to let your client tell me what was
10
     discussed; is that right?
11
           MS. DANDENEAU: That's correct.
12
13
           MR. MORRIS: You know, I had given
14
     the instruction prior to the break not to
15
     speak with counsel. I would have
16
     appreciated --
           MS. DANDENEAU: No, you didn't --
17
18
     actually, that is not true, Mr. Morris.
19
     You said not to speak with anyone. We
20
     never have interpreted that to mean
     conversations with counsel. That's never
21
22
     been -- I have never, ever heard that
     instruction.
23
           MR. MORRIS: Okay. We will -- we
24
     will -- we will deal with it when and if we
25
```

```
Page 75
                  WATERHOUSE - 10-19-21
 1
          have to.
                Mr. Waterhouse, after learning about
 3
          Ο.
     the agreement, did you ask anybody if the
 4
 5
     agreement was reflected in a writing?
 6
                MS. DANDENEAU: Objection to form.
          Α.
 7
                No.
                Did you ask anybody if the terms of
 8
          Ο.
     the agreement were memorialized anywhere?
 9
10
                MS. DANDENEAU: Objection to form.
                MR. MORRIS: What is the --
11
12
          Α.
                No.
                MS. DANDENEAU: Well, because you
13
14
          keep talking about this agreement and I --
15
          I -- I think, Mr. Morris, that is really
16
          not clear what you mean by "the agreement."
          And maybe you can just go back and restate
17
          what that is.
18
19
                MR. MORRIS: Okay. Your client has
20
          agreed with me twice on the definition, but
          I will try one more time.
21
22
                Mr. Waterhouse, do you understand
          Ο.
23
     that when I use the term "agreement," I'm
24
     referring to the agreement between Jim and
     Nancy Dondero concerning certain promissory
25
```

```
Page 76
                  WATERHOUSE - 10-19-21
 1
     notes where you learned that one of the terms
     of the agreement was milestones reached?
 3
 4
          Α.
                Okay.
 5
                And did you understand that that was
          Ο.
 6
     the -- the agreement that we were referring to
     every time we used the word "agreement" in this
 7
     deposition?
 8
 9
                I don't know anything about this
          Α.
     agreement. So, look, I do -- it -- I don't
10
     know whether --
11
                Let's -- let's try this again.
12
          Q.
13
          Α.
                Yeah. Look, I don't know what this
14
     agreement relates.
15
                MS. DEITSCH-PEREZ: John, John --
16
          Q.
                Let me try --
                MS. DEITSCH-PEREZ: John, please let
17
          the witness finish.
18
19
                MR. MORRIS: Please stop. Please
20
          stop. Please stop talking.
21
                MS. DEITSCH-PEREZ: No, you stop.
22
          Let the witness --
23
                MR. MORRIS: Stop talking.
24
                MS. DEITSCH-PEREZ: -- finish -- you
25
          interrupted him.
```

```
Page 77
                  WATERHOUSE - 10-19-21
 1
                MR. MORRIS: You know what, you
          quys, this is really wrong. It is really,
 3
          really wrong. Okay?
 4
 5
                I had the witness agree not once,
 6
          but twice to the definition of agreement.
 7
                I'm going to try and do it a third
          time.
 8
 9
                MS. DANDENEAU: No, but, please,
10
          John, really --
                MR. MORRIS: No, please stop
11
          talking. Please. It is my deposition.
12
13
          Object to questions.
                MS. DANDENEAU: No, but also you
14
15
          instructed him that -- that if you were
          qoing -- if you were interrupting him, that
16
          he should remind you that you're
17
          interrupting him and -- and --
18
                MR. MORRIS: Let him do that.
19
20
          him do that.
                MS. DANDENEAU: Okay. Well, you --
21
22
                MR. MORRIS: Please stop talking.
                Okay. I don't know any of the
23
          Α.
24
     details of these agreements. I don't know
     anything about them. I heard -- someone -- I
25
```

Page 78 WATERHOUSE - 10-19-21 1 don't know who, I don't know when, as you asked, sometime in '21, someone told me about 3 this -- or I don't honestly know -- I don't 4 5 even recall exactly how I was made aware of 6 this, but I was. I don't know -- I don't know any of these details, and I'm getting -- again, 7 there is, you know, I -- I -- I had a passing 8 conversation with -- with Jim at some point 9 on -- on some -- on the executive comp, and I'm 10 getting confused of what is what, because 11 again, I don't know any of these details. 12 13 Ο. Okay. Let me try again, Mr. Waterhouse, and I apologize. 14 15 Are you aware of any agreement 16 between Jim Dondero and Nancy Dondero concerning any promissory note that was given 17 to Highland by any affiliate or Mr. Dondero? 18 19 MS. DEITSCH-PEREZ: Object to the 20 form. I've heard of an agreement. 21 Α. 22 is -- that is -- I mean, if you are using aware 23 as heard, sure. 24 And you understand that one of the 25 terms of the agreement is that it was based on

Page 79 WATERHOUSE - 10-19-21 1 milestones that had to be reached; is that right? 3 MS. DANDENEAU: Objection to form. 4 That was one of the words that was 5 Α. 6 used when I heard about it, yes. 7 And when you heard about this Ο. agreement that had a term in it concerning 8 milestones reached, did you ask the person who 9 was telling you about the agreement whether or 10 not it was in writing? 11 12 I did not. Α. 13 Q. Did you ask any questions at all? 14 MS. DANDENEAU: Objection to form. 15 Α. Not that I recall. 16 Ο. But do you understand that going forward, we're going to refer to the agreement 17 as the agreement that you just described that 18 19 you were --20 MS. DANDENEAU: Object to the form. 21 Α. Yes. Okay. You don't have any personal 22 Ο. knowledge concerning the terms of the 23 24 agreement; correct? 25 MS. DEITSCH-PEREZ: Object to the

```
Page 80
                  WATERHOUSE - 10-19-21
 1
          form.
                You can answer.
 3
          Ο.
                I don't -- I heard about the
 4
          Α.
 5
     agreement. I don't know anything -- I heard
 6
     there was an agreement. That is -- again, as I
 7
     testified before -- I said before, heard about
     it, don't know the details. I believe it was
 8
     sometime this year.
 9
                Do you have any personal knowledge
10
     about the terms of the agreement, sir?
11
                MS. DANDENEAU: Objection to form.
12
13
          Α.
                Other than what I have previously
14
     discussed, I don't -- I don't know.
15
          Ο.
                Did -- did Mr. Dondero tell you
16
     about the existence of the agreement?
                I don't recall.
17
          Α.
                Do you recall the source of your
18
          Ο.
     information when you learned about the
19
20
     agreement?
                No, I don't -- I don't recall. I
21
          Α.
22
     don't remember. I just -- I heard about it
     generally. I don't remember -- I don't
23
24
     remember who, how, if, how. I don't remember.
25
                You know, Mr. Waterhouse, I just
          Q.
```

Page 81 WATERHOUSE - 10-19-21 1 want to be clear that I never would have asked you to appear at this deposition if your name 3 hadn't been included in responses to discovery 4 as to somebody with knowledge about the -- who 5 6 was told about the existence of the agreement. That is what prompted me do this, and I really do feel compelled to tell you that 8 I otherwise would never have called you as a 9 So I regret that you're being put 10 through this today. I had no intention of 11 burdening you or taking your time, but that is 12 13 the reason that we issued the subpoena is 14 because certain of the defendants identified 15 you as somebody --16 MS. DEITSCH-PEREZ: Mr. Morris, you 17 are here to ask questions, not to have --18 MR. MORRIS: I feel badly for the 19 I really do. quy. 20 MS. DEITSCH-PEREZ: I'm sure you do. 21 MR. MORRIS: I do. Stop. 22 MS. DEITSCH-PEREZ: You stop. 23 MR. MORRIS: I'm allowed. 24 MS. DEITSCH-PEREZ: No, you're not allowed to have a chat with the witness. 25

```
Page 82
                  WATERHOUSE - 10-19-21
 1
                      Well, I hope that you
          Q.
                Okay.
     appreciate what I'm saying here,
 3
     Mr. Waterhouse.
 4
 5
                MS. DANDENEAU: All right. Let's go
 6
          ahead and ask questions, and again, you're
 7
          entitled to probe his -- his knowledge
          of -- whatever knowledge he has about
 8
 9
          this -- this agreement and --
10
                              That is what I'm doing.
                MR. MORRIS:
                MS. DANDENEAU: -- he will answer
11
12
          the questions to the best that he can.
13
                MR. MORRIS:
                              That is what I'm doing.
14
          Q.
                Mr. Waterhouse, I take it you do not
15
     know which promissory notes issued by which
     affiliates or Mr. Dondero are the subject of
16
     this agreement; do I have that right?
17
                Yes, I don't -- I don't know.
18
          Α.
19
                Do you know of any way to determine
          Ο.
20
     which promissory notes issued by the affiliates
     and Mr. Dondero are the subject of this
21
22
     agreement other than asking Jim or Nancy
     Dondero?
23
24
                MS. DANDENEAU: Objection to form.
25
          Α.
                I don't know.
```

```
Page 83
                   WATERHOUSE - 10-19-21
 1
          Q.
                 Did you ever make --
                 I don't know anything about these
 3
          Α.
 4
     agreements.
                 Did you ever make any effort to
 5
          Ο.
 6
     determine which promissory notes are subject to
 7
     this agreement?
          Α.
 8
                 No.
 9
                 Did you ever ask anybody which
          Q.
     promissory notes are subject to this agreement?
10
          Α.
                 No.
11
                 Do you know if there is a list
12
          Q.
13
     anywhere of the promissory notes that are
     subject to this agreement?
14
15
          Α.
                 I'm not aware.
                 Have you ever seen the terms of the
16
          Ο.
     agreement written down anywhere?
17
          Α.
18
                 No.
19
                 Have you ever asked anybody whether
          Ο.
20
     the terms of the agreement were written down
     anywhere?
21
22
          Α.
                 I have not.
                Did learning about the agreement
23
          Ο.
24
     cause you to do anything in response?
25
                 MS. DANDENEAU: Objection to form.
```

```
Page 84
                   WATERHOUSE - 10-19-21
 1
          Α.
                 No.
                Did anybody ever describe to you the
 3
          Ο.
     nature of the milestones that you referred to
 4
 5
     earlier?
 6
                No, I don't -- I don't have any
 7
     details of this.
                 That is fine.
          0.
 8
 9
                 PricewaterhouseCoopers served as
     Highland's outside auditors prior to the
10
     petition date; correct?
11
12
          Α.
                 Yes.
13
          Ο.
                You refer to PricewaterhouseCoopers
14
     as PwC?
15
          Α.
                 Yes.
                 PricewaterhouseCoopers audited
16
          Ο.
     Highland's financial statements on an annual
17
     basis; correct?
18
                 During my -- during my time as -- as
19
          Α.
20
     CFO, yes, PricewaterhouseCoopers was the
     auditor.
21
                 Do you know why Highland had its
2.2
     annual financial statements audited each year?
23
24
          Α.
                 Generally.
25
                 Tell me your general understanding
          Q.
```

Case 3:21-cv-00881-X Docume Dxhirb 1-A8 Paled 103.40912446 Page 53 of 200 PageID 54575 Page 85 WATERHOUSE - 10-19-21 1 as to the reason why Highland had its annual financial statements audited each year. 3 From -- from time to time, they were 4 5 used -- or asked for, as part of diligence or 6 transactions or -- or things of that nature. 7 And were they given to third parties for purposes of diligence or transactions from 8 9 time to time? 10 As far as I'm aware, yes. Α. And was it your understanding as the 11 Ο. CFO that the third parties who received the 12 13 financial statements in diligence or transactions was going to rely on those? 14 15 MS. DANDENEAU: Objection to form. I don't know -- I don't know gen --16 Α. I don't know specifically what they were going 17 to rely on. You know, we would get requests 18 19 for audited financial statements. I don't know what they were relying on. 20 And --21 0. Α. You would have to ask them.

- 22
- Did you personally play a role in 23 Ο.
- 24 PwC's annual audit and the conduct of the
- 25 audit?

```
Page 86
                  WATERHOUSE - 10-19-21
 1
                MS. DANDENEAU: Objection to form.
          Α.
                During my tenure as CFO, I played a
 3
     very minimal role.
 4
 5
                What was the minimal role that you
          Ο.
 6
     played?
 7
                You know, again, it was -- it was to
          Α.
     check in with the team, to make sure that, you
 8
 9
     know, audit -- the deadlines were being hit,
     information was being presented to the auditors
10
     in a -- in a timely fashion, but, you know,
11
     other than that, it was a very capable team
12
13
     that are still current employees of Highland
14
     and, you know, they -- they conducted 99
15
     percent of -- look, I don't want to give
     percentages. I mean, this is -- but I -- I --
16
     I played a minimal role towards the end.
17
                Before during my earlier years as
18
19
     CFO, I did more, and then as time went on, I
20
     did less in it.
21
          Ο.
                Okay. Was there a person at
22
     Highland who was responsible for overseeing
     Highland's participation in PwC's audit during
23
24
     the time that you were the CFO?
                Yeah.
25
                       I mean, there was -- there
          Α.
```

Page 87 WATERHOUSE - 10-19-21 1 2. was a -- there was a point -- it varies. varies by year, in function, in time and, you 3 know, depending on the request, but yes, I 4 mean, there is -- there is -- there is 5 6 generally a point person of communication. 7 And who was the point person from 2016 until the time you left Highland? 8 I don't -- I don't know 9 Α. specifically, but it would have been, you 10 know -- you know, someone on the corporate 11 12 accounting team. 13 Ο. And was there a head of the 14 corporate accounting team? 15 Α. Yes, so -- yes. 16 Ο. Who was the head of corporate accounting for the five years prior to the time 17 you left Highland? 18 I don't -- if you're asking from 19 Α. 20 2016 on, I don't -- it was Dave Klos, but, 21 again, there was -- there was changes to the 22 team and the reporting structure. I don't 23 remember exactly when that happened during --24 you know, over the last -- since 2016. 25 Did the folks who participated and Q.

Page 88 WATERHOUSE - 10-19-21 1 ran the audit all report to you, directly or indirectly? 3 Α. 4 Yes. 5 And did you have any responsibility Ο. 6 for making sure that the audit report was 7 accurate before it was finalized? Α. Yeah. I mean, you know, that --8 that is -- my responsibility to the auditors 9 was -- again, is -- and the CFO is to -- we are 10 providing accurate financial statements; right? 11 And -- and -- and as part of any 12 13 audit, we disclose all relevant information as 14 part of any audit. 15 0. Okay. And as the CFO, did you take 16 steps to make sure that the audit report was 17 accurate? I mean, I would say in a general 18 Α. sense, yes. But, again, I mean, I had a 19 20 very -- I had a very capable and competent team. I wasn't managing them. 21 22 You know, part of what I do is I let 23 the team -- I want managers to grow. I want 24 managers to have rope. And that is -- you 25 know, I'm not a stand-behind-you type of quy.

Page 89 WATERHOUSE - 10-19-21 1 If you -- if you talk to my team members, I'm not micromanaging people. I want people to 3 learn and grow in their function so they can go 4 5 on and do bigger and better things with their 6 careers. And so, yes, generally I was 7 responsible for it, but I wanted the team to 8 learn and grow and be responsible for the bulk 9 of the audit. 10 Did you personally review each audit 11 report before it was finalized to satisfy 12 13 yourself that it was accurate? 14 I don't -- I don't recall, you know, 15 for every single -- we're talking 2016, there would have been three years, 2016 to '17, '18. 16 I don't -- we're -- we're going back 17 five years-plus. I don't -- you know, I don't 18 recall. 19 20 Did you have a practice that you 0. 21 employed to make sure that you were satisfied 22 that Highland's audit reports were true and accurate to the best of your knowledge? 23 24 I mean, our -- the practice was set Α.

up with our -- the -- the practice to put

25

Page 90 WATERHOUSE - 10-19-21 1 together accurate audited or accurate financial statements is to your control environment. 3 So, you know, the -- so the practice 4 was to maintain a stable control environment 5 6 which then the output is -- is accurate 7 financial statements. So -- so, you know, if I was 8 comfortable that the control environment was 9 operating, then, you know, that would dictate 10 how I would -- you know, what I might or might 11 not do in a given year. 12 13 Okay. Do you recall ever being 14 uncomfortable with the control environment 15 during the period that you served as CFO? I mean, look, yes, there are 16 Α. Yeah. times -- you know, nothing is perfect. So 17 there were -- there were times when, yes, you 18 know -- there are times I learned I was 19 20 uncomfortable with the control environment, and 21 that is part of the management of the process 22 and having, you know -- and -- and working through whatever obstacles present themselves. 23 24 Okay. Were you ever uncomfortable Ο. 25 with the control process as it related to

```
Page 91
                   WATERHOUSE - 10-19-21
 1
     reporting and disclosures of loans to
     affiliates and Mr. Dondero?
 3
                MS. DANDENEAU: Objection to form.
 4
                I don't -- I don't recall --
 5
          Α.
 6
          Ο.
                So you don't recall --
 7
                -- the --
          Α.
                MS. DANDENEAU: Mr. Morris --
 8
 9
          Α.
                I don't recall being uncomfortable.
     But, again, we're going back several years.
10
     don't -- you know, the practice in an audit is
11
     to disclose all information to the auditors.
12
13
     And I don't -- I don't recall.
14
                As part of the process of the audit,
          Ο.
     did you sign what is sometimes referred to as a
15
16
     management representation letter?
17
          Α.
                Yes.
18
                MR. MORRIS: Can we put up on the
19
          screen a document that we have premarked as
20
          Exhibit 33.
                 (Exhibit 33 marked.)
21
22
                MS. DANDENEAU: Mr. Morris, that is
          not in the binder; correct?
23
24
                MR. MORRIS: Correct.
25
                So you will see, Mr. Waterhouse,
          Q.
```

Page 92 WATERHOUSE - 10-19-21 1 this is a letter dated June 3rd. And if we could go to the signature page. 3 And do you see that you and 4 Mr. Dondero signed this document? 5 6 Α. Yes. 7 That is your signature; right? Q. Α. 8 Yes. 9 MR. MORRIS: Okay. Can you go back 10 to the top. MS. DANDENEAU: Mr. Morris, can you 11 have somebody post this in the chat so that 12 13 we have can have a copy of this, please. 14 MR. MORRIS: Yeah, sure. Asia, can 15 you do that, please. Okay. Do you see at the bottom of 16 Ο. the second paragraph there is a reference to 17 materiality? 18 19 Α. Yes. 20 Okay. It says, Materiality used for Q. purposes of these representations is 21 \$1.7 million. 22 23 Do you see that? 24 Α. I do. And did PwC set that level of 25 Q.

Page 93 1 WATERHOUSE - 10-19-21 materiality? 2. Α. Yes. 3 And for purposes of the audit, did 4 0. PwC set the level of materiality each year? 5 6 Α. Yes. 7 Did that number change over time? Q. I'm not aware of what materiality is 8 Α. every single year, so -- but, you know, this 9 number would likely fluctuate. 10 Okay. I'm going to go back to a 11 question I asked you earlier today. And that 12 is in connection -- this letter is issued in 13 14 connection with the audit for the period ending 15 12/31/2018; correct? 16 Α. Yes. Okay. And is it fair to say that if 17 Ο. any -- actually, withdrawn. I'm going to take 18 it outside of this. 19 20 If Highland ever forgave the loan to any affiliate or any of its officers or 21 22 employees, in whole or in part, to the best of your knowledge, would that forgiveness have 23 24 been disclosed in the audited financial statements if it exceeded the level of 25

Page 94 WATERHOUSE - 10-19-21 1 materiality that PwC established? MS. DANDENEAU: Objection to form. 3 Α. So, again, during my tenure as CFO, 4 and -- Highland -- it was -- it is required to 5 6 disclose any affiliate loans that are in excess 7 of materiality. Now, the forgiveness of those loans 8 may or may not -- I mean, since materiality 9 fluctuates every year, a -- you know, if a loan 10 was forgiven, it may or may not, you know --11 and, look, I would want to consult the guidance 12 13 around this. 14 It is not something we do -- you know, it is not -- you know, GAAP can be and 15 disclosures can be very specialized so, again, 16 we want to consult the guidance. But we would 17 see if and what would need to be disclosed if 18 it were deemed immaterial. 19 20 Did you and Mr. Dondero sign Ο. 21 management representation letters of this type 22 in each year in which you served as Highland's CFO? 23 24 Α. I -- I -- I will speak for myself. 25 I signed them. There may have been others that

Case 3:21-cv-00881-X Docume Dxhibit-A8 Paled 0440912446 Page 63 of 200 PageID 54585 Page 95 WATERHOUSE - 10-19-21 1 signed as well. I don't -- I don't recall. But to the best of your knowledge, 3 Ο. you, personally, signed a management 4 representation letter in connection with 5 6 Highland's audit each year that you served as 7 the CFO; correct? I would say generally speaking, 8 Α. Mr. Morris. I don't recall for every single 9 year, you know, generally, but I would want to 10 refer to all the rep letters and see who signed 11 12 them. 13 Do you recall Highland having its financial statements audited in any year during 14 15 the period that you were a CFO where you didn't sign the management representation letter? 16 I don't recall. But, John, we're 17 Α. going back five, six, seven, eight, nine, 18 decade. I don't -- I don't remember. 19 20 I don't want to go back that many 0. decades, but I'm just asking you if you recall 21 22 that there was you didn't sign it?

I -- I -- I don't, but my memory

is -- again, I -- I -- I can't tell you what I

did in 2012. I mean, I think generally, yes,

23

24

25

Α.

Page 96 WATERHOUSE - 10-19-21 1 but I don't -- I don't know for sure, and I would want to rely on the document. 3 Let me ask the question a little bit 4 differently then. 5 6 Do you have any reason to believe 7 that Highland had its annual financial audit and you did not sign a management 8 representation letter in connection with that 9 10 audit? MS. DANDENEAU: Objection to form. 11 Α. I don't believe it would, but, 12 13 again, I would want to -- I don't recall and I 14 would want to confirm it to -- to make, you 15 know, an affirmative -- to give an affirmative 16 answer. Do you know whether PwC required 17 management to sign management representation 18 19 letters? 20 MS. DANDENEAU: Objection to form. I mean, it -- management 21 Α. Yes. 22 representation letters are signed by 23 management. 24 Okay. And do you know -- do you Ο. have any understanding as to why PwC requires 25

```
Page 97
                  WATERHOUSE - 10-19-21
 1
     management to sign management representation
     letters?
 3
                MS. DEITSCH-PEREZ: Object to the
 4
 5
          form.
                I don't know why PwC's -- what PwC's
 6
          Α.
 7
     specific practice is. I know generally what
     management representation letters are.
 8
 9
          Q.
                Okay. Do you personally -- I'm not
     asking about PwC. I'm asking for you -- I'm
10
     asking about you, do you have an understanding
11
     as to why the auditor asks for management
12
13
     representation letters?
14
                Okay. So you're asking me in my
15
     personal capacity, yes, I have a general
16
     understanding of why.
                Can you give me the general
17
     understanding that you have as to why
18
19
     management representation letters are required?
20
          Α.
                They are -- they are required to --
     they are -- they are one of the items required
21
22
     in an audit to help verify completeness.
23
          Ο.
                Do you have any -- any other
24
     understanding as to why management
25
     representation letters are required?
```

```
Page 98
                  WATERHOUSE - 10-19-21
 1
                That is -- that is -- other than
          Α.
     what I said, it is -- it is -- it is required
 3
     so -- to ensure that the -- you know, there
 4
     is -- there is completeness in what is being
 5
 6
     audited.
 7
                Did you -- did you have a practice
     whereby you and Mr. Dondero conferred about the
 8
     management representation letters before you
 9
     signed them?
10
          Α.
11
                No.
                Did you have a practice --
12
          Q.
13
     withdrawn.
14
                Do you see just the next sentence
     after the materiality, there is a sentence that
15
     states: We confirm, to the best of our
16
     knowledge and belief, as of June 3rd, 2019, the
17
     date of your report, the following
18
19
     representations made to you during your audit.
20
                Do you see that sentence?
21
          Α.
                Yes.
22
                Okay. Did you understand when you
          Ο.
23
     signed this letter that you were confirming the
24
     representations that followed?
25
                When I signed this management
          Α.
```

Page 99 WATERHOUSE - 10-19-21 1 2. letter -- representation letter, yes. Did you discuss this letter 3 Ο. Okay. with Mr. Dondero before you signed it? 4 I don't recall. 5 Α. 6 Ο. Do you recall if Mr. Dondero asked 7 you any questions before he signed the letter? I don't recall. Α. 8 Do you recall if you asked 9 Q. Mr. Dondero any questions before you signed 10 this letter? 11 I don't recall. 12 Α. 13 Ο. Is it fair to say that Mr. Dondero did not disclose to you the existence of the 14 15 agreement that we have -- as we've defined that term prior to the time you signed this letter? 16 17 MS. DANDENEAU: Objection to form. I don't think I understand the 18 Α. 19 So, again, you are saying, did Mr. Dondero not disclose to me the existence of 20 this letter? 21 22 No, I apologize. Ο. Did Mr. Dondero disclose to you the 23 24 existence of the agreement prior to the time you signed this letter on June 3rd, 2019? 25

Page 100 WATERHOUSE - 10-19-21 1 Α. The agreement -- the agreement that we talked about earlier? 3 0. Correct. 4 Look, as I said earlier, the first 5 Α. 6 time I heard of this agreement was sometime 7 this year. Okay. Can we turn -- let's just 8 Ο. look at a couple of items on the list. If we 9 can go to page 33416. Do you see in Number 35 10 it talks about the proper recording or 11 disclosure in the financial statements of ND 12 13 relationships and transactions with related 14 parties. 15 Do you see that? Α. I do. 16 As the CFO, do you have any 17 Ο. understanding as to whether Dugaboy is a 18 related party? 19 20 Α. I don't recall. Do you know whether any of the 21 Q. 22 affiliates are related parties? If -- if it was NexPoint, HCMFA, 23 Α. 24 HCMS, HCRE, yeah, if -- if that is the affiliate definition, and there. In ASC 850 --25

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1 WATERHOUSE - 10-19-21
```

- 2 again, I mean, I haven't looked at ASC 850 in
- 3 quite some time, but, you know, if -- if there
- 4 is a control language, you know, ASC 850, would
- 5 that -- that section in GAAP would -- would
- 6 pick up and define what are related parties.
- 7 So, you know, like I said, if -- one
- 8 of the four entities I just described, if -- if
- 9 they are in that control definition of ASC 850,
- 10 they would be picked up in 35D.
- 11 Q. Do you -- do you have any reason to
- 12 believe that they would be picked up in that
- 13 definition, based on your knowledge and
- 14 experience?
- 15 A. I -- I believe that entities
- 16 controlled under GAAP are -- are affiliates.
- 17 Q. Okay. Would Mr. Dondero also
- 18 qualify as a related party for purposes of
- 19 Section 35D, to the best of your knowledge?
- 20 A. Yeah, I don't -- I don't know. I
- 21 would think -- I would have to read the code
- 22 section to see if someone personally -- is it
- 23 talking about related parties. So, look, if
- 24 your own in control, yeah, I mean, I would have
- 25 to read the section.

Case 3:21-cv-00881-X Docume Dxhib 1-A8 Palge 10510012446 Page 70 of 200 Page ID 54592 Page 102 WATERHOUSE - 10-19-21 1 To the best of your knowledge, was O. the existence of the agreement ever disclosed 3 to PwC? 4 5 Α. I'm not -- I'm not aware. 6 Ο. Do you recall if the agreement was 7 ever disclosed in Highland's audited financial statements? 8 I don't -- I don't remember if it Α. 9 was in every Highland's audited financial 10 statements during my tenure. We would have to 11 read the financial statements to see what was 12 disclosed, but I'm not -- I mean, as I sit here 13 14 today, I'm not aware. 15 Q. That is all I'm asking for. 16 Α. I'm not aware. 17 Ο. Can we go to the next page, please, and look at 36. 36 says, we have disclosed to 18 you the identity of the partnership's related 19 20 party relationships and all the related party relationships and transactions of which we are 21 22 aware. 23 Do you see that? 24 Α.

To the best of your knowledge, as of 25 Q.

Yes.

Page 103 WATERHOUSE - 10-19-21 1 June 3rd, 2019, did Highland disclose to PwC the identity of the partnership's related 3 parties and all the related party relationships 4 and transactions of which it was aware? 5 Α. 6 I mean, I can speak for myself as 7 signer of this representation letter. disclosed what -- what, you know, what --8 what -- what I knew. Sorry, look, yes, so I --9 I disclosed what I knew. 10 Okay. Can we go to page 419. Do 11 you see at the end there is a reference to 12 13 events that occurred since the end of the 14 fiscal year and the date of the letter? 15 Α. Yes. And were you aware of that -- of 16 Ο. that provision of the management representation 17 letter before you signed the document? 18 19 Α. Yes. 20 Do you have an understanding as to Q. why PwC asked for that confirmation of that 21 particular part of the management 22 representation letter? 23 It is -- it is -- it is just -- it 24

is a typical audit request.

25

Page 104 WATERHOUSE - 10-19-21 1 Ο. And do you understand -- do you have an understanding that PwC wanted to know that 3 as of the date of the audit whether any 4 5 material changes had occurred since the end of the fiscal year, using the definition of 6 materiality that is in this particular 7 management representation letter? 8 It -- it is -- it is a --Α. 9 it is as described. It is just a poorly worded 10 question, so it is hard for me to say yes. 11 If I asked you this, I apologize, 12 Ο. 13 but did you ever learn when the agreement was 14 entered into? 15 Α. I don't -- I don't -- like I said 16 before, I don't know or have any details of the 17 agreement. Okay. Did you ever ask anybody when 18 Ο. 19 the agreement was entered into? 20 Α. I did not. Let's look at the audited financial 21 Ο. statements. We will put up on the screen a 22 document that has been premarked as Exhibit 34. 23 24 (Exhibit 34 marked.)

MS. DANDENEAU: And again, if Ms. La

25

```
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                  WATERHOUSE - 10-19-21
 1
          Canty could please put that in the chat
          room, that would be great.
 3
                MR. MORRIS: I will assure you we
 4
 5
          will put every document in the chat room.
 6
          Ο.
                Now, I'm just going to ask you
 7
     questions that are related to the provisions of
     this report that concern the affiliate loans,
 8
     but again, Mr. Waterhouse, if there is any part
 9
     of the document that you need to see or that
10
     you think you might need to see in order to
11
     refresh your recollection to answer any of my
12
13
     questions, will you let me know that?
14
          Α.
                Yes.
15
                Because this is a pretty lengthy
          Ο.
     document, but do you see that the cover page
16
     here is the Highland consolidated financial
17
     statements for the period ending December 31st,
18
19
     2018?
20
          Α.
                Yes.
                If we can go to -- I think it is the
21
          0.
     next one, looking for PwC's signature line.
22
                             I'm sorry, John, did you
23
                MS. CANTY:
24
     say something?
25
                MR. MORRIS: Yes, can we turn the
```

Page 106 WATERHOUSE - 10-19-21 1 I think it is 215. Yes, stop right there, just above -- I'm sorry, I want to 3 see just the date of the report. 4 5 Okay. Do you see at the bottom of Ο. 6 that page there, Mr. Waterhouse, 7 PricewaterhouseCoopers has signed this audit 8 report? 9 Α. Yes, I see their signature. Okay. And it is the dated same day 10 Ο. 11 as your management representation letter; is that right? 12 13 Α. It is -- yes, it is the same day. 14 Q. Was that the practice to sign the 15 management representation letter on the same day that the audit report was signed? 16 Yes, that is typical in every audit. 17 Α. Can we just scroll down to the 18 Q. 19 balance sheet on the next page. 20 Do you see that there is a line 21 there that says, Notes and Other Amounts Due from Affiliates? 22 23 Α. Yes. 24 Does that line, to the best of your Ο. knowledge, include the amounts that were due 25

1 WATERHOUSE - 10-19-21

- 2 under the affiliate under the notes signed by
- 3 the affiliates and Mr. Dondero?
- 4 MR. RUKAVINA: Objection to the
- 5 extent that calls for a legal conclusion.
- A. I mean, I would want to see the
- 7 detail and the build to this \$173,398,000, but,
- 8 yes, I mean, if -- if -- given what we
- 9 discussed before, you know, it -- it should
- 10 capture that.
- 11 Q. And -- and while you were the CFO of
- 12 Highland, were all notes held by Highland that
- were issued by an affiliate or Mr. Dondero
- 14 carried as assets on Highland's balance sheets?
- MS. DANDENEAU: Objection to form.
- MS. DEITSCH-PEREZ: Object to form.
- 17 A. I don't -- I don't know how else
- 18 they would be carried.
- 19 Q. Okay. Can you think of any -- are
- 20 you aware of any promissory note issued by an
- 21 affiliate or Mr. Dondero that was not carried
- on Highland's audited financial balance sheets?
- A. I'm -- I'm -- I'm not aware.
- Q. Okay. Are you aware of any category
- of asset on Highland's balance sheet in which

Page 108 WATERHOUSE - 10-19-21 1 any of the promissory notes issued by an affiliate or Mr. Dondero would have been 3 included? 4 5 MS. DANDENEAU: Objection to form. 6 Α. Sorry, am I aware of any asset of an 7 affiliate being included --That -- let me -- let me try again. 8 Ο. 9 Do you see there is a number of different assets that are described on this 10 balance sheet? 11 12 Α. Yes. 13 Ο. One of the assets that is described is Notes and Other Amounts Due from Affiliates; 14 15 right? 16 Α. Yes. And it is reasonable to conclude 17 Ο. that the notes from the affiliates and 18 Mr. Dondero are included in that line item; 19 20 right? Yes, based on this description. 21 Α. 22 Again, I would want to see a build of this to 100 percent confirm, but based on the 23 24 description, the asset description, it is -- it is likely. 25

Page 109 WATERHOUSE - 10-19-21 1 2. Now, does that mean absolute? don't know. 3 Do you have any reason to believe 4 that the promissory notes would have been 5 6 carried on the balance sheet in a category 7 other than Notes and Other Amounts Due from Affiliates? 8 9 If they were deemed -- no. If they Α. were deemed an affiliate, you know, under GAAP, 10 they should be carried in that line. 11 Otherwise, it would go into another line. 12 Okay. And do you see the total 13 Ο. 14 asset base as of December 31st, 2018, was 15 approximately \$1.04 billion? 16 Α. Yes. Is my math correct that the Notes 17 Ο. and Other Amounts Due from Affiliates 18 constituted approximately 17 percent of 19 20 Highland's assets as of the end of 2018? Well, so how are you defining 21 Α. 22 Highland? Highland Capital Management, L.P., 23 Ο. 24 the entity that this audit is subject to -- or the subject of. 25

Page 110 WATERHOUSE - 10-19-21 1 On a consolidated or unconsolidated Α. basis? 3 I'm looking at the balance sheet. 4 5 It is a consolidated balance sheet. Okay? 6 Does the Notes and Other Amounts Due 7 from Affiliates constitute approximately 17 percent of the total assets of Highland 8 Capital Management, L.P., on a consolidated 9 10 basis? MS. DANDENEAU: Objection to form. 11 Α. I don't have a calculator in front 12 13 of me but I will take your math, if you are 14 taking the 173 divided by the billion. 15 Q. Okay. 16 Α. If that is accurate, yes. But, again, on a consolidated basis. 17 And on an unconsolidated basis the 18 Ο. percentage would be higher; correct? 19 20 Α. I -- no. I don't know. 21 Q. Well, okay. That is fair. 22 MR. MORRIS: Can we turn to 23 page 241, please. 24 Do you see that this is a section of Ο. the audit report that is entitled Notes and 25

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- 2 Other Amounts Due from Affiliates?
- 3 A. Sorry, I can't see the -- the --
- 4 Q. It is at the top.
- 5 A. Notes and Other Amounts Due from
- 6 Affiliates, yes, I see that. I don't -- I
- 7 don't have a page number, but I'm on a page
- 8 that says at the top: Notes and Other Amounts
- 9 Due from Affiliates.

1

- 10 Q. Okay. And that is the same title of
- 11 the line item on the balance sheet that we just
- 12 looked at; right? Notes and Other Amounts Due
- 13 from Affiliates?
- 14 A. Yes.
- 15 Q. And is it your understanding, based
- on your experience and knowledge as the CFO,
- 17 that this is the section of the narrative that
- 18 ties into the line item that we just looked at?
- 19 A. Yes.
- 20 O. And is this section of the audit
- 21 report intended to describe and disclose all of
- 22 the material facts concerning the Notes and
- 23 Other Amounts Due from Affiliates?
- MS. DANDENEAU: Objection, form.
- 25 A. This -- these notes -- these notes

1 WATERHOUSE - 10-19-21

- of the financial statements are -- the purpose
- 3 is to disclose any material items in relation
- 4 to that balance sheet line item.
- 5 Q. Okay. And all of the information,
- 6 to the best of your knowledge, that is set
- 7 forth in this section of the audit report was
- 8 provided by Highland; correct?
- 9 A. Yes, it would have been provided by
- 10 the corporate accounting team.
- 11 Q. Okay. And the corporate accounting
- 12 team, did that team report to you in the
- 13 organizational structure?
- 14 A. Yes.
- 15 Q. And did you have any concerns about
- 16 the controls that were in place to make sure
- 17 that the information provided with respect to
- 18 Notes and Other Amounts Due from Affiliates was
- 19 accurate and complete?
- MS. DANDENEAU: Objection to form.
- 21 A. Not that I recall.
- Q. Okay. Do you recall ever being
- 23 concerned that any portion of the Notes and
- 24 Other Amounts Due from Affiliates in any audit
- 25 report was inaccurate, incomplete, or not

Page 113 WATERHOUSE - 10-19-21 1 2. reliable? Α. I didn't -- I had concerns about, 3 you know, like I talked about before, of there 4 were -- there were potentially issues in the 5 6 control environment. But as far as it relates to the audited financial statements, any -- the 7 team would work with the auditors to disclose 8 all -- all notes in Highland's possession. 9 10 And any -- any notes that were deemed material by the auditor, right, these 11 were disclosed in these -- in this section, you 12 13 know, in -- in the notes to the consolidated 14 financial statements as you presented. 15 Do you recall ever having a Ο. conversation with anybody at any time 16 concerning the accuracy of the section of audit 17 reports that relates to Notes and Other Amounts 18 Due from Affiliates? 19 20 MS. DANDENEAU: Objection to form. You know, as -- as -- I didn't have 21 Α. 22 direct conversations with PricewaterhouseCoopers as I had, you know --23 24 I -- I had the team that managed this. 25 Again, I wasn't anywhere chose to

- 1 WATERHOUSE 10-19-21
- 2 being the point person of this audit. And I
- 3 can't recall, you know, when -- you know, I
- 4 don't even know if I was ever the point person
- 5 during my tenure as CFO.
- I don't know if PwC had any concerns
- 7 when they were performing those audit
- 8 procedures. They may have and they may have --
- 9 and it may not have been communicated to me. I
- 10 don't know.
- 11 MR. MORRIS: All right. I move to
- 12 strike.
- Q. And I'm going to ask you to listen
- 14 carefully to my question.
- 15 Did you -- do you recall ever having
- 16 a conversation with anybody at any time
- 17 concerning the accuracy of the reporting
- 18 provided in the audited financial statement on
- 19 the topic of Notes and Other Amounts Due?
- MS. DANDENEAU: Objection to form.
- 21 A. I don't recall for this, but that
- 22 doesn't mean that it didn't exist.
- Q. Okay. But you have no reason to
- 24 believe, as you sit here right now, that you
- 25 ever discussed with anybody concerns over the

Page 115 WATERHOUSE - 10-19-21 1 accuracy of the section of the audit reports called Notes and Other Amounts Due from 3 Affiliates; correct? 4 5 MS. DANDENEAU: Object to the form. 6 MS. DEITSCH-PEREZ: Objection to 7 form. Α. I don't recall having any 8 conversations. But, again, I mean, this is --9 this is two years ago. 10 I'm just asking for your 11 Ο. recollection, sir. 12 13 Α. Yes. If you don't recall, this will --14 Q. 15 Α. Yeah. (Overspeak) -- if you don't 16 Ο. recall --17 Yeah, I don't -- I don't recall. 18 Α. 19 Do you know who was responsible for Ο. 20 drafting the audit report? Are you asking the actual Highland 21 Α. 22 employee responsible? I mean, it was Highland's responsibility, so, I mean, that 23 24 is --25 Right. Q.

Page 116 WATERHOUSE - 10-19-21 1 Α. -- Highland's responsibility. Highland's responsibility. 3 Who, at Highland, was responsible 4 for drafting this section of the audit report? 5 6 Α. I -- I don't know the answer to 7 Again, there was a team who worked on And I don't know, you know, whether it 8 was the staff or the manager. 9 10 Again, this is where I let the teams manage. And, you know, there may be a 11 corporate accountant who worked on this. 12 just -- you know, I wasn't part of that process 13 14 to give that person experience. I don't know. 15 Do you recall having any Ο. communications with anybody at any time 16 concerning this section of the report? 17 Yeah, I don't recall. 18 Α. 19 Do you recall whether you ever told Ο. 20 anybody at any time that any aspect of this section of the report was inaccurate or 21 22 incomplete? I don't recall. 23 Α. As you sit here today, do you have

any reason to believe that this section of the

24

25

Ο.

Page 117 WATERHOUSE - 10-19-21 1 audit report is incomplete or inaccurate in any way? 3 And I'm happy to give you a moment 4 to -- to look at it, if you would like. 5 MS. DANDENEAU: Objection to form. 6 7 MS. DEITSCH-PEREZ: Same. I mean, I would have to look at -- I 8 Α. would have to look at the bill to the note 9 schedule to make sure I know you presented me 10 with materiality, but again, there might be a 11 note as of 12/31/18 that somehow was -- was 12 13 under materiality not disclosed. I don't -- I 14 I would need more information. 15 Okay. But without more information, Ο. 16 you have no reason to believe anything this section is inaccurate; correct? 17 MS. DANDENEAU: Objection to form. 18 19 Α. I don't. I mean, you know, this was 20 part of the audit. Thank you. Now, you will see if we 21 Ο. could scroll just a little bit more that each 22 of the first five paragraphs concerns 23 24 specifically the four affiliates that we've been discussing and Mr. Dondero. 25

Page 118 WATERHOUSE - 10-19-21 1 MR. MORRIS: If we could go the other way, La Asia. We don't need Okada. 3 We're going to have to thread the needle. 4 Okay. Good, perfect. 5 6 Ο. Do you see those five paragraphs 7 certain the four affiliates and Mr. Dondero as we've been referring to today? 8 Α. Yes. 9 Okay. And do you see at the end of 10 every paragraph it states, quote: A fair value 11 of a partnership's outstanding notes receivable 12 approximates the carrying value of the notes 13 14 receivable? 15 Α. Yes, I see that. Do you have an understanding of what 16 Ο. that means? 17 18 Α. Yes. 19 What is your understanding of that Ο. 20 sentence? It is the -- again, the -- the fair 21 Α. value, right, which is -- which is what the --22 what Highland could sell that asset for. 23 24 statement is comparing the fair value of the notes to the carrying value, so the carrying 25

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- 2 value is the line item that you showed me
- 3 earlier that is in Notes and Other Amounts Due
- 4 from Affiliates.
- 5 Q. Okay. Is another way to say this is
- 6 that the fair market value of the notes equals
- 7 the principal amount and -- withdrawn.
- 8 Is the fair way to interpret this
- 9 that the fair market value of the notes equals
- 10 all remaining unpaid principal and interest due
- 11 under the notes?
- MS. DANDENEAU: Object to the form.
- MS. DEITSCH-PEREZ: Objection, form.
- 14 A. I don't know the answer to that,
- 15 because I don't recall where -- where any --
- 16 where -- in what line item was the interest
- 17 component reported.
- 18 Q. All right. Well, if we look in this
- 19 audit report, you will see in the middle of the
- 20 first paragraph, for example, it states that as
- of December 31st, 2018, total interest and
- 22 principal due on outstanding promissory notes
- 23 was approximately \$5.3 million.
- Do you see that?
- 25 A. I do.

Page 120 WATERHOUSE - 10-19-21 1 Q. Is that the carrying value or the fair value? 3 That would be the carrying value --4 Α. And is the last --5 Ο. 6 Α. -- in my opinion. 7 Okay. And it is in your opinion as Ο. the chief financial officer of Highland during 8 the period of time that you described; right? 9 It is an educated opinion? 10 I'm reading this at face value. 11 taking that as that is carrying value. 12 13 0. Okay. And does the last sentence 14 say that the carrying value is roughly 15 approximate to the fair market value? 16 Objection to form. MS. DANDENEAU: MS. DEITSCH-PEREZ: Objection, form. 17 Again, this note to the financial 18 Α. statement is specific to notes and other 19 amounts due from affiliates. 20 21 Ο. Correct. 22 If the interest component is Α. reported elsewhere on the balance sheet, you 23 24 know, it -- it -- it could be off. Again, I don't have the detail. I don't know, but yes, 25

- 1 WATERHOUSE 10-19-21
- 2 look, I mean, if you -- I mean, if you are
- 3 saying the 5.3 million is in the notes and
- 4 other amounts due from affiliates, then the
- 5 last statement is saying the fair value
- 6 approximates 5.3 million. That is what that
- 7 last sentence is saying.
- 8 Q. Do you see in the middle of the
- 9 first paragraph -- not in the middle, the next
- 10 to last sentence there is a statement that the
- 11 partnership will not demand payment on amounts
- that exceed HCMFA's excess cash availability
- 13 prior to May 31st, 2021.
- Do you see that?
- 15 A. I do.
- 16 Q. Do you know when Highland agreed not
- 17 to demand payment as described in that
- 18 sentence?
- 19 A. I don't know specifically.
- 20 Q. Do you know why Highland agreed not
- 21 to demand payment on HCMFA's notes until May
- 22 2021?
- 23 A. Yes.
- Q. Why was that decision made?
- 25 A. You know, well, it -- it -- that

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- 2 decision was made as to not put HCMFA into a
- 3 position where it didn't have sufficient assets
- 4 to pay for the demand note.
- 5 Q. And at the time the agreement was
- 6 entered into, pursuant to which the partnership
- 7 wouldn't demand payment, did HCMFA have
- 8 insufficient assets to satisfy the notes if a
- 9 demand had been made?
- 10 MS. DANDENEAU: Objection to form.
- 11 A. I don't have HCMFA's financial
- 12 statements in front of me as of 12/31/18.
- 13 O. Was there a concern that HCMFA would
- 14 be unable to satisfy its demands under the
- 15 notes if demand was made?
- MS. DANDENEAU: Objection to form.
- 17 A. Well, there is -- I don't recall --
- 18 I mean, there is something, right, in place to
- 19 basically not demand payment until May 31, 2021
- 20 as detailed here.
- 21 Q. And who made the decision to enter
- 22 into -- who made the decision on behalf of
- 23 Highland not to demand payment until May 31st,
- 24 2021?
- 25 A. I'm trying to remember. I don't

Page 123 WATERHOUSE - 10-19-21 1 remember exactly -- I don't remember if it was 2. myself or -- or Jim Dondero who -- who -- there 3 was -- there was something signed, from what I 4 recall, that -- that -- that backed up this 5 6 line item in the -- in the notes I'm -- look, 7 I'm, I'm --We will get to that. 8 Ο. 9 Α. You --10 I'm just --Q. You have -- I mean --11 Α. We're going to give that to you. 12 Ο. I'm going to give that to you. 13 You -- you -- you have all the 14 Α. 15 documents. I don't have the documents, and that is what makes it so hard. I don't have 16 any documents to prepare for this deposition; 17 right? You have all -- I don't -- I don't -- I 18 don't remember, but, you know, again, it would 19 20 probably be myself or Jim. Do you know if Highland received 21 Ο. anything in return for its agreement not to 22 make a demand for two years? 23 24 Α. I don't -- I don't think it referred 25 anything.

Page 124 WATERHOUSE - 10-19-21 1 And did you and Mr. Dondero discuss 2. Q. HCMFA's ability to satisfy the notes if a 3 demand was made at the time this agreement was 4 5 entered into? MS. DANDENEAU: Objection to form. 6 7 Α. I don't -- I don't -- I don't recall having a specific conversation, if I did, or --8 or David Klos. 9 Okay. I'm just asking if you recall 10 any conversations that you had. 11 I don't recall. 12 Α. 13 Ο. Okay. Do you know why Highland 14 loaned the money to HCMFA that is the subject 15 of the notes described in this paragraph? I don't remember specifically why 16 Α. 5.3 million was loaned. I mean, I -- it would 17 have to be put in the context. 18 19 Do you have any recollection at all Ο. as to why Highland ever loaned any money to 20 21 HCMFA? 22 Α. Yes. 23 MS. DANDENEAU: Objection to form. 24 Q. What do you remember about that? There was a Highland Global 25 Α.

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- 2 Allocation Fund, which was a -- a fund managed
- 3 by Highland Capital Management Fund Advisors.
- 4 There was a -- we -- I'm just telling you,
- 5 there was -- there was -- there was a -- a
- 6 ultimately a NAV error found in this fund while
- 7 it was an open-ended fund and, you know, there
- 8 were amounts owed by the advisor in -- in
- 9 relation to that NAV error.
- There were also, for the same fund,
- 11 that same fund was ongoing an
- 12 open-end-to-close-end conversion, and as part
- of that proposal, shareholders who voted for
- 14 the conversion received compensation from the
- 15 advisor.
- 16 Q. All right. Now, the events that
- 17 you're describing occurred in the spring of
- 18 2019; right?
- 19 A. These started back -- I think, I
- 20 mean --
- Q. I apologize.
- 22 A. -- that -- I mean, the answer to
- 23 that is no.
- Q. I apologize, the loans that were
- 25 made in connection with the events that you're

Page 126 1 WATERHOUSE - 10-19-21 describing occurred in May 2019; right? 2. MR. RUKAVINA: Objection to the 3 extent that calls for a legal conclusion. 4 I don't recall specifically what 5 Α. 6 amounts of money were moved when, for what 7 purpose. Okay. Fair enough. Going to the 8 Ο. next paragraph, do you recall that NexPoint 9 Advisors had obtained a number of loans from 10 Highland, and they rolled up those loans into 11 one note in approximately 2017? 12 13 Α. This is for NexPoint Advisors? 14 Q. Yes. 15 Α. I -- I mean, I don't -- I don't recall the NexPoint Advisors loan being a 16 roll-up loan, but --17 18 Ο. Do you know why? But, look, if you have documents 19 Α. 20 that show -- I mean, look, I just don't recall. Okay. That is fair. Do you know 21 Ο. why -- do you have any recollection as to why 22 Highland loaned money to NexPoint? 23 24 Α. Yes. 25 Why did High -- why do you recall --Q.

Page 127 WATERHOUSE - 10-19-21 1 what is the reason you recall Highland lending money to NexPoint? 3 I mean, I was just -- I just -- I 4 just recall. I mean, I just -- I don't 5 6 remember why. 7 I understand. And I'm asking you if vou recall --8 9 Oh, why -- I thought you say --Α. NexPoint Advisors was launching a fund which 10 is -- I believe that the legal name is NexPoint 11 Capital, Inc. And it -- it provided a 12 13 co-invest into that fund. 14 And, from what I remember, the --15 the -- that NexPoint borrowed money from Highland at the time to make that co-invest. 16 So this was an investment that 17 NexPoint was required to make; is that right? 18 19 MS. DANDENEAU: Objection to form. 20 Α. I don't know if it was required to make, I don't recall that, or if it just made 21 22 it. Okay. But your recollection is that 23 Ο. 24 NexPoint made an investment and they borrowed money from Highland to finance the investment. 25

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 1
                 Do I have that right?
          Α.
                Yes.
 3
                How about HCRE? Do you know why
 4
          Ο.
 5
     HCRE borrowed money from Highland?
 6
          Α.
                 I don't remember specifically.
 7
          Q.
                 Do you remember generally?
                 Generally, yeah -- I mean, yes.
 8
          Α.
 9
                 Can you tell me your general
          Q.
     recollection as to why Highland loaned money to
10
11
     HCRE?
                For -- for -- for investment
12
          Α.
13
     purposes.
14
          Q.
                 So HCRE made the investment and it
15
     obtained a loan, or loans, from Highland in
     order to finance that investment or those
16
     investments.
17
                Do I have that right?
18
                 I mean, I -- you know, generally.
19
          Α.
20
                Okay. How about Highland Management
          Q.
     Services, Inc.?
21
22
                Do you have any recollection as to
     why HCMS borrowed money from Highland?
23
24
          Α.
                Generally.
                 What is your general recollection as
25
          Q.
```

Page 129 WATERHOUSE - 10-19-21 1 to why HCMS borrowed money from Highland? Α. For -- for investment purposes. 3 So it is the same thing, HCMS wanted 4 0. 5 to make investments and it borrowed money from 6 Highland in order to finance those investments; 7 is that right? 8 Α. I mean, yes, generally. I mean, I can't -- I don't -- on the services, there --9 there are several loans in these schedules. 10 You know, I can't remember why every single one 11 of these were made, but I would say, yeah, I 12 13 mean, generally. 14 Q. Okay. I appreciate that. 15 MR. MORRIS: Let's go to the page with Bates No. 251. La Asia, are you 16 there? 17 18 MS. CANTY: Sorry, John. It went 19 out for a minute. Can you say that again. 20 I don't know what is going on. MR. MORRIS: The page with Bates 21 22 No. 251, can we go to that. 23 MS. CANTY: Yes, sorry. 24 MR. MORRIS: Keep going to the 25 bottom. Yeah, there you go.

Case 3:21-cv-00881-X Docume Dxhir Dt-A8 Paled 0790912446 Page 98 of 200 Page ID 54620 Page 130 WATERHOUSE - 10-19-21 1 Ο. Do you see, Mr. Waterhouse, that there is a section there called Subsequent 3 4 Events? I do. 5 Α. And does this relate to the last 6 Ο. 7 sentence above the signature line on the management representation letter that we talked 8 about earlier where you made the representation 9 that you disclosed subsequent events? 10 I mean, it relates to it, but not in 11 12 its entirety. 13 Q. Okay. 14 MR. MORRIS: If we can scroll up to 15 capture the entirety of this section right 16 here. And what do you mean by that, sir? 17 Ο. MR. MORRIS: Yeah, right there. 18 Perfect. 19 There are -- there are different 20 Α.

- 21 subsequent events in -- under GAAP. So there
- 22 are -- and -- and -- so what we see in the
- 23 notes to the financial statements are one type
- 24 of subevent.
- Q. Okay. And -- and would the type of

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1 WATERHOUSE - 10-19-21
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- 2 subsequent event relating to affiliate loans be
- 3 captured in this section if they were -- if
- 4 they were made after the end of the fiscal year
- 5 and prior to the issuance of the audit report?
- A. Yes, if they were deemed material or
- 7 disclosable.
- 8 Q. Okay. I appreciate that.
- 9 Do you see the next to the last
- 10 entry there? It says, Over the course of 2019
- 11 through the report date, HCMFA issued
- 12 promissory notes to the partnership in the
- aggregate amount of \$7.4 million?
- 14 A. Yes.
- 15 Q. And does that refresh your
- 16 recollection that those are the notes that
- 17 related to the NAV error that you mentioned
- 18 earlier?
- 19 A. I don't -- I don't remember the
- 20 exact. Again, there are -- I mentioned two
- 21 line items; right?
- 22 Q. Yes.
- 23 A. I mean, it was the GAAP conversion
- 24 process plus the -- the NAV error. I don't
- 25 have the details. I don't recall specifically

- 1 WATERHOUSE 10-19-21
- 2 if -- you know, what -- if that 7.4 million was
- 3 solely attributable to the NAV error.
- 4 Q. Okay. But there is no question that
- 5 Highland told PricewaterhouseCoopers that over
- 6 the course of 2019 HCMFA issued promissory
- 7 notes to the partnership in the aggregate
- 8 amount of \$7.4 million; correct?
- 9 A. In the course of the audit, we would
- 10 have produced all promissory notes in our
- 11 possession, including the ones that are
- 12 detailed here.
- 13 Q. Do you recall that you signed the
- 14 two promissory notes that are referenced in
- 15 that provision?
- MS. DANDENEAU: Objection to form.
- 17 A. I didn't recall initially but I've
- 18 been reminded.
- 19 Q. Okay. And -- and do you recall that
- 20 those notes are dated May 2nd and May 3rd,
- 21 2019?
- 22 A. Yes.
- 23 Q. So that was just a month before the
- 24 audit was completed; correct?
- 25 A. Yes. I think we had a June 3rd

Page 133 WATERHOUSE - 10-19-21 1 date, right, if -- if my memory serves me right. 3 Yes, I will represent to you that 4 Ο. 5 your memory is accurate in that regard. 6 Did anybody ever instruct you as the 7 CFO to correct this statement that we're looking at in subsequent events? 8 Α. So let me understand. You're saying 9 when I was CFO at Highland Capital did anyone 10 ever ask me to correct the -- over the course 11 of 2019 through the report date HCMFA issued 12 13 promissory notes, this statement? 14 Q. Right. 15 Α. Not that I'm aware. 16 Ο. While you were the CFO of Highland, did anybody ever tell you that that sentence 17 18 was wrong? 19 Not that I'm aware. Α. 20 Q. Highland -- withdrawn. HCMFA disclosed these notes in its 21 22 own audited financial statements; right? 23 MR. RUKAVINA: Objection, form. 24 Α. I assume that these would be material -- if these are material financial 25

Page 134 WATERHOUSE - 10-19-21 1 statements, yes, they -- they -- they should be and they were likely disclosed. 3 Now, there is no statement 4 5 concerning the 2019 notes about the forbearance that we looked at in the affiliated note 6 7 section of the report; right? MS. DANDENEAU: Objection to form. 8 9 Q. I'll withdraw. That was bad. Do you recall when we were looking 10 at the paragraph concerning HCMFA earlier it 11 had that disclosure about the agreement whereby 12 13 Highland wouldn't ask for demand on the -- on 14 the HCMFA notes? 15 Α. Yes. That forbearance disclosure is not 16 Ο. made with respect to the 2019 notes; right? 17 Not -- look, not that I can recall, 18 Α. 19 unless -- unless it was done at a subsequent 20 day. Right. And it is not in the 21 Ο. subsequent event section that we're looking at 22 right now where the 2019 notes are described; 23 24 right? 25 Right. But this is through Α.

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 1
                It could have been done on June 4th.
     June 3rd.
     I don't -- I don't -- I don't recall.
 3
 4
          Ο.
                Okay.
 5
                MR. MORRIS: Can we put up on the
 6
          screen the HCMFA audit report. And while
 7
          we're --
                MS. DANDENEAU: What exhibit is
 8
          this?
 9
10
                MR. MORRIS: La Asia, what number is
          that?
11
                MS. CANTY:
                             45.
12
13
                MR. MORRIS: So this will be marked
14
          as Exhibit 45.
15
                 (Exhibit 45 marked.)
                MS. CANTY: Yeah, and I will put it
16
17
          in the chat.
18
                MS. DANDENEAU: Thank you.
19
                Okay. All right. Do you see that
          Ο.
20
     this is the consolidated financial statements
     for HCMFA for the period ending 12/31/18?
21
22
          Α.
                Yes.
                As the treasurer of HCMFA at the
23
          Ο.
24
     time, did you have to sign a management
     representation letter similar to the one that
25
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Page 136 WATERHOUSE - 10-19-21 1 we looked at earlier for Highland? Α. I would imagine I would have been 3 asked to. I don't recall if I did. 4 5 Do you recall ever being asked by an Ο. 6 auditor to sign a management representation 7 letter and then not doing it? 8 Α. No. 9 MR. MORRIS: Can we just scroll down again. I just want to see the date of the 10 document. 11 I mean, let me -- you know, there 12 Α. 13 are different versions to management 14 representation letters I will qualify. 15 Yes, there are certain -- from time 16 to time auditors can make representations 17 that -- in the rep letter that is being 18 proposed that are inaccurate or out of scope or 19 things like that and they've asked for 20 signature. In that context, yes. I mean, you 21 22 know -- I mean, if I have been asked to sign and make those representations and those 23 24 representations are invalid, yes, I would not, 25 I mean, I -- I wouldn't sign that.

Case 3:21-cv-00881-X Docume Exhibits 148 Piage 01869 12446 Page 105 of 200 Page 1D 54627 Page 137 WATERHOUSE - 10-19-21 1 Ο. Okay. PricewaterhouseCoopers served as HCMFA's outside auditors as well; correct? 3 Yes. 4 Α. 5 Do you see that this audit report is Ο. signed on June 3rd, 2019, just like the 6 7 Highland audit report? Α. That is correct. 8 And did the process of -- of 9 Q. preparing HCMFA's audit report, was that the 10 same process that Highland followed when it did 11 its audit report at this time? 12 I mean, it is a different entity. 13 Α. There are different assets. You know, it --14 15 it -- it is -- as you saw, Highland's financials are on a consolidated basis. 16 This is different, so it is under the same control 17 environment and team. 18 19 Okay. I appreciate that. So the Ο. 20 same control environment and team participated in the preparation of the audit for Highland 21 22 and for HCMFA at around the same time; correct?

23

24

25

Α.

Yes.

MR. MORRIS: Can we go to page 17 of

Page 138 WATERHOUSE - 10-19-21 1 2. Q. Okav. Do you see that just like Highland's audited financial report, HCMFA's 3 audited financial report also has a section 4 related to subsequent events? 5 6 Α. Yes. 7 And am I reading this correctly that Q. just as Highland had done, HCMFA disclosed in 8 its audited financial report a subsequent event 9 that related to the issuance of promissory 10 notes to Highland in the aggregate amount of 11 \$7.4 million in 2019? 12 13 Α. That is what I see in the report. 14 Q. And you were the treasurer of HCMFA 15 at the time; right? Yes, to the best of my knowledge. 16 Α. And did anybody ever tell you prior 17 Ο. to the time of the issuance of this audit 18 19 report that that sentence relating to HCMFA's 20 2019 notes was inaccurate or wrong in any way? Not that I recall. 21 Α. 22 As you sit here right now, has Ο. anybody ever told you that that sentence is 23 24 inaccurate or wrong in any way?

Not that I recall.

25

Α.

Page 139 WATERHOUSE - 10-19-21 1 I apologize if I asked you this Q. already, but has anybody ever told you at any 3 time that you are not authorized to sign the 4 5 promissory notes that are the subject of the 6 sentence we're looking at? 7 Not that I recall. Α. Did anybody ever tell you at any 8 Ο. time that you had made a mistake when you 9 signed the promissory notes that are the 10 subject of this sentence? 11 12 Α. Say that again. Did anyone ever say 13 that I made a mistake? 14 Q. Let me ask the question again. Did anybody ever tell you at any 15 16 time that you made a mistake when you signed the two promissory notes in Highland's favor on 17 behalf of HCMFA in 2019? 18 Not that I recall. 19 Α. 20 MR. MORRIS: Let's just look at the promissory notes quickly. Can we please 21 22 put up Document Number 1, and so this is in 23 the pile that y'all have. We'll just go for a few more minutes and we can take our 24 25 lunch break.

Page 140 WATERHOUSE - 10-19-21 1 All right. So I don't know if you 2. Ο. have seen this before, sir. Do you see that 3 this is a complaint against HCMFA? 4 Yes, I am looking at it on the 5 6 screen. 7 And have you ever seen this Ο. Okay. document before? 8 9 I went through some of these Α. documents with my counsel here yesterday. 10 MR. MORRIS: All right. Can we go 11 to Exhibit 1 of this document. 12 13 Ο. Do you see Exhibit 1 is a 14 \$2.4 million promissory note back in 2019? 15 Α. Yeah, I found it in the book. Yes, I have it here in front of me. 16 And this is a demand note, right, if 17 Ο. you look at Paragraph 2? 18 19 Α. Yes. 20 Q. And this is a note where the maker is HCMFA, and Highland is the payee; right? 21 22 Α. Yes. 23 MR. MORRIS: And if we can scroll 24 down, can we just see Mr. Waterhouse's 25 signature.

Page 141 WATERHOUSE - 10-19-21 1 2. Q. Is that your signature, sir? Α. Yes, it is. 3 And did you sign this document on or 4 Ο. 5 around May 2nd, 2019? I don't recall specifically signing 6 Α. 7 this, but this is my signature. And do you recall that 8 Ο. Okav. Highland transferred \$2.4 million to HCMFA at 9 or around the time you signed this document? 10 I don't recall specifically. 11 would want to, as I sit here today, go back and 12 13 confirm that, but again, presumably that -that -- that did happen. 14 15 You wouldn't have signed this Ο. document if you didn't believe that HCMFA 16 either received or was going to receive 17 \$2.4 million from Highland; is that fair? 18 I mean, it -- if -- if there 19 Α. 20 wasn't a transfer of value, yeah, I mean, you 21 know, I would have no reason to -- to sign a 22 note. 23 And -- and Highland wouldn't have Ο. 24 given this note to PricewaterhouseCoopers if --25 withdrawn.

Page 142 WATERHOUSE - 10-19-21 1 HCMFA wouldn't have given this note to PricewaterhouseCoopers if it hadn't received 3 the principal value of -- of the note in the 4 form of a loan; correct? 5 6 MR. RUKAVINA: Objection, legal 7 conclusion, speculation and form. Again, we -- what we provided to PwC 8 Α. were, as part of the audit, any promissory 9 notes executed and outstanding. You know, as a 10 part of the audit, they, you know, they -- they 11 have copies of all the bank statements, 12 13 things -- things of that sort. 14 MR. MORRIS: Okay. Can we go to 15 Exhibit 2. (Exhibit 2 marked.) 16 Do you see that this is a promissory 17 Ο. note dated May 3rd, 2019 in the amount of 18 \$5 million? 19 20 Α. Yes. Do you believe this is also a demand 21 Q. note if you look at Paragraph 2? 22 23 Α. Yes. 24 And do you see that HCMFA is the Ο. 25 maker, and Highland is the payee?

Page 143 WATERHOUSE - 10-19-21 1 Α. Yes. And if we go to the bottom, can we 3 Ο. just confirm that that is your signature? 4 5 Α. Yes. 6 Ο. And together these notes are the 7 notes that are referred to both in Highland and HCMFA's audited financial reports in the 8 9 subsequent event sections; correct? 10 MS. DANDENEAU: Objection to form. Α. They -- they -- they totaled 11 \$7.4 million, so presumably, yes. 12 13 0. Okay. And you were authorized to sign these two notes; correct? 14 15 MR. RUKAVINA: Objection, legal conclusion. 16 Yeah. I mean, I'm -- I was the 17 Α. officer of -- of HCMFA. You know, I -- I'm not 18 19 the legal expert on -- on what that -- what 20 that confers to me or what it doesn't. I mean, that is my signature on the notes. 21 22 And you believed you were authorized Ο. to sign the notes; is that fair? 23 I signed a lot of documents in my 24 Α. 25 capacity, just because it is operational in

Case 3:21-cv-00881-X Docume Exhibits 148 Piteme (112/13/30/12446 Page 112 of 200 Page ID 54634 Page 144 WATERHOUSE - 10-19-21 1 So, you know, to me this was just 2. another document, to be perfectly honest. 3 Sir, would you have signed 4 promissory notes with the principal amount of 5 \$7.4 million if you didn't believe you were 6 7 authorized to do so? MS. DANDENEAU: Objection to form. 8 9 Q. Are you frozen? I'm just -- you know, it is --10 Α. you know, again, I typically don't sign 11 promissory notes, and I don't recall why I 12 13 signed these, but -- you know, but I did. 14 Ο. All right. So listen carefully to my question. Would you have ever signed 15 promissory notes with a face amount of 16 \$7.4 million without believing that you were 17 authorized to do so? 18 19 I mean, I'm -- I'm putting my Α. 20 signature on there, so no. Okay. And would you have signed two 21 Ο. promissory notes obligating HCMFA to pay 22 Highland \$7.4 million without Mr. Dondero's 23

TSG Reporting - Worldwide

MS. DEITSCH-PEREZ: Object to the

877-702-9580

prior knowledge and approval?

24

25

Page 145 WATERHOUSE - 10-19-21 1 form. You know, from -- from what I recall 3 Α. around these notes, you know, I don't recall 4 specifically Mr. -- Mr. Dondero saying to -- to 5 6 make this a loan. 7 So my conversation with Mr. Dondero around the culmination of the NAV error as 8 related to TerreStar which was a -- a -- I 9 think it was a year and a half process. 10 don't know, it was a multi-month process, very 11 laborious, very difficult. 12 13 When we got to the end, I had a 14 conversation with Mr. Dondero on where to, you 15 know, basically get the funds to reimburse the fund, and I recall him saying, get the money 16 from Highland. 17 And so he told you to get the money 18 Ο. 19 from Highland; is that right? That is what I recall -- in my 20 Α. conversation with him, that is -- that is what 21 I can recall. 22 Do you know who drafted these notes? 23 Ο. 24 Α. I don't. 25 Did you ask somebody to draft the Q.

Page 146 WATERHOUSE - 10-19-21 1 2. notes? I didn't ask -- I don't specifically 3 Α. ask people to draft notes really. I mean, 4 5 again, you know, the legal group at Highland is 6 responsible and has always been responsible for drafting promissory notes. 7 So based on your -- based on the 8 Ο. practice, you believe that somebody from the 9 Highland's legal department would have drafted 10 these notes. Do I have that right? 11 12 MS. DEITSCH-PEREZ: Object to the 13 John, I also asked you for the Word 14 versions of these notes so we could look at the properties, and you have not provided 15 them. Are you intending to? 16 17 MR. MORRIS: No. 18 Q. Can you answer my question, sir? 19 Α. Again, I --20 MS. DANDENEAU: Do you want him to 21 repeat it? 22 Yeah, why don't you repeat it? Α. Sure. Mr. Waterhouse, based on the 23 Q. 24 practice that you have described in your understanding, do you believe that these notes 25

Page 147 WATERHOUSE - 10-19-21 1 would have been drafted by somebody in the legal department? 3 MS. DEITSCH-PEREZ: Object to the 4 5 form. 6 Α. Yes. 7 Okay. And do you know who would Ο. have instructed -- do you have any knowledge as 8 to who would have instructed the legal 9 department to draft these notes? 10 MS. DEITSCH-PEREZ: Object to the 11 form. 12 13 Α. It was whoever was working -- I 14 mean, it was likely someone on the team. 15 mean, I don't remember exactly on every note or every document, but, again, a lot of these 16 things of this nature -- they're operational in 17 18 nature -- were handled by the team. The team knows to -- I mean, we 19 20 don't draft documents. We're not lawyers. 21 We're not attorneys. It is not what I do or 22 accountants do. 23 So they are always instructed to go 24 and -- and go to the legal team to get documents like this drafted. Also, when you go 25

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- 1 WATERHOUSE 10-19-21
- 2 to the legal team, the -- you know, we always
- 3 loop in compliance. And compliance -- when you
- 4 go to the legal team, compliance is part of
- 5 legal team. They're made aware of -- of -- of
- 6 these types of transactions.
- 7 Q. And do you believe that you had
- 8 the -- withdrawn.
- 9 Did you ever tell Mr. Dondero --
- 10 (inaudible) -- did you see those?
- 11 A. Sorry.
- 12 MS. DEITSCH-PEREZ: I did not hear
- the end of that question.
- 14 Q. Did you ever tell Mr. Dondero that
- 15 you signed these two notes?
- 16 A. I don't recall ever -- no, I don't
- 17 recall having a conversation with him.
- 18 Q. Did you ever discuss these two notes
- 19 with him at any time?
- 20 A. The conversation, I recall, was what
- 21 I described earlier. And that is the only time
- 22 I recall ever discussing this.
- Q. Okay. But the corporate accounting
- 24 group had a copy of this -- of these two notes.
- 25 And pursuant to the audit process, the

Page 149 WATERHOUSE - 10-19-21 1 corporate accounting group gave the two notes to PricewaterhouseCoopers in connection with 3 the audit; correct? 4 5 MS. DANDENEAU: Objection to form. 6 Α. Yes. I mean, that is -- yeah, I 7 mean, they -- unless the legal team can also retain copies of items like this. I mean, I 8 don't know everything that they would retain as 9 10 well. The legal team would also, if they 11 had documents as part of audits, turn that over 12 13 to the auditors as well. So it could have been 14 the corporate accounting team. It could be 15 someone on the legal team. All right. So you didn't -- you 16 Ο. didn't draft this note; right? 17 I -- I -- I did not. 18 Α. 19 But somebody at Highland did; is Ο. 20 that fair? MS. DEITSCH-PEREZ: Object to the 21 22 form. I don't know. I mean, we can go to 23 Α. 24 the legal team. I don't -- I'm not sitting behind someone in legal. Maybe they went to 25

Page 150 WATERHOUSE - 10-19-21 1 outside counsel. I have no idea. Did you have any reason to believe 3 Ο. you weren't authorized to sign this note, 4 either of these two notes? 5 6 Α. I think I have already answered that 7 question. Okay. You didn't give these notes 8 Ο. to PricewaterhouseCoopers; correct? 9 10 MS. DANDENEAU: Objection to form. I don't recall giving these to 11 Α. 12 PricewaterhouseCoopers. 13 And in the practice that you have 14 described, somebody in the corporate accounting 15 group would have given these two notes to 16 PricewaterhouseCoopers; correct? 17 MS. DANDENEAU: Objection to form. I think I've answered that. 18 Α. I said either the corporate accounting team or maybe 19 20 the legal team. MR. MORRIS: Okay. Why don't we 21 2.2 take our lunch break here. 23 VIDEOGRAPHER: We're going off the 24 record at 1:04 p.m. 25 (Recess taken 1:04 p.m. to 1:49 p.m.)

```
Page 151
                   WATERHOUSE - 10-19-21
 1
                 VIDEOGRAPHER: We are back on the
          record at 1:49 p.m.
 3
                Mr. Waterhouse, did you speak with
 4
          Ο.
     anybody during the break about the substance of
 5
     this deposition?
 6
 7
                 I spoke to -- to Deb and Michelle.
                About the substance of the
 8
          Ο.
 9
     deposition?
10
          Α.
                 Yes.
                 Can you tell me what you talked
11
          Q.
12
     about?
13
                MS. DANDENEAU: No. We object on
          the basis of privilege.
14
15
                 Okay. You are going to follow your
          Q.
     counsel's objection here?
16
17
          Α.
                 Yes.
18
          Q.
                 Okay.
19
                 MR. MORRIS: Can we put up on the
20
          screen Exhibit 35.
                 (Exhibit 35 marked.)
21
                Are you able to see that document,
22
          Ο.
     sir?
23
24
          Α.
                 Yes.
                 Have you ever seen an incumbency
25
          Q.
```

Page 152 WATERHOUSE - 10-19-21 1 certificate before? Α. I have. 3 Do you have a general understanding 4 0. of what an incumbency certificate is? 5 6 Α. I have a general understanding. 7 What is your general understanding? Q. You know, those -- my general 8 Α. understanding is that the incumbency 9 certificate basically lists folks that can --10 are like authorized signers. 11 Okay. And do you see that this is 12 Q. 13 an incumbency certificate for Highland Capital Management Fund Advisors, L.P.? 14 15 Α. Yes. Okay. And if we could scroll down 16 Ο. just a little bit, do you see that it's dated 17 effective as of April 11th, 2019? 18 19 Α. Yes, I see that. 20 Okay. And is that your signature in Q. the middle of the signature block? 21 22 Α. Yes, it is. And by signing it, did you accept 23 Ο. 24 appointment as the treasurer of HCMFA effective as of April 11th, 2019? 25

Page 153 WATERHOUSE - 10-19-21 1 Α. Again, I'm not the legal -- I don't know if this makes me the treasurer or the 3 appointment. I don't know -- I don't know 4 5 that, so I don't -- I don't know if that 6 document -- again, I think -- again, I'm not 7 the legal expert. I think isn't there -aren't there other legal documents that detail 8 who the officers are that could be incorporated 9 or things like that? Again, I don't want to 10 play armchair attorney here. 11 I'm not asking you for a legal 12 Q. 13 conclusion. I'm asking you for your knowledge 14 and understanding. When you signed this document, did you understand that you were 15 16 accepting an appointment as the treasurer of HCMFA? 17 MS. DANDENEAU: Objection to form. 18 19 MS. DEITSCH-PEREZ: Objection, form. 20 Α. Again, I don't think this -- that wasn't my understanding. I don't think this 21 22 makes -- this document makes me the treasurer. What do you think this document --23 Ο. 24 why did you sign this document? 25 MS. DEITSCH-PEREZ: Objection to

```
Page 154
                  WATERHOUSE - 10-19-21
 1
          form.
                MR. MORRIS: You're objecting to the
 3
          form of the question when I asked him why
 4
          did you sign the document? What is the
 5
 6
          basis for the objection?
 7
                MS. DEITSCH-PEREZ: Because, John, I
          think that it does call for a legal
 8
 9
          conclusion other than -- with him saying
10
          because somebody told me to sign this
          document. But if you want to go there,
11
12
          that is fine.
13
                MR. MORRIS: Okay.
14
                MS. DANDENEAU: I don't think --
15
          he's already said he's not a lawyer.
                MR. MORRIS: I'll allow the witness
16
          to answer this question.
17
                Why did you sign this document, sir?
18
          Ο.
19
                I mean, our -- our legal group would
          Α.
20
     bring by these incumbency certificates from
     time to time. I have no idea why they're being
21
22
     updated, and I was asked to sign.
                Did you ask anybody, what is this
23
          Ο.
24
     document?
25
          Α.
                No.
```

```
Page 155
                   WATERHOUSE - 10-19-21
 1
                Did anybody tell you why they needed
          Ο.
     you to sign the document?
 3
          Α.
                Not that I can recall.
 4
 5
          Ο.
                You testified earlier that you
 6
     understood that you served as the acting
 7
     treasurer for HCMFA; correct?
          Α.
 8
                Yes.
                How did you become the acting
 9
          Q.
     treasurer of HCMFA?
10
                MS. DANDENEAU: Objection to form.
11
                I don't -- I don't know the legal --
12
          Α.
13
     I don't know the legal mechanic of how I became
14
     the acting treasurer.
15
                I'm not asking for the legal
          Q.
                I'm asking you as the person who
16
     mechanic.
17
     is --
                MS. DANDENEAU: John, you said --
18
                MR. MORRIS:
19
                              Stop.
20
                MS. DANDENEAU: -- how did you
21
          become the treasurer. That is --
22
                MR. MORRIS: Please stop.
23
                MS. DANDENEAU:
                                 That is a legal
24
          question.
25
                MR. MORRIS: I am not asking any
```

```
Page 156
                  WATERHOUSE - 10-19-21
 1
          legal questions, to be clear. I'm asking
          for this witness' understanding as to how
 3
          he became the acting treasurer of HCMFA.
 4
          If he doesn't know, he can say he doesn't
 5
 6
          know, but this legal stuff is nonsense, and
 7
          I really object to it.
                Sir, I'm asking you a very simple
 8
          Ο.
     question.
 9
10
                MS. DANDENEAU: Argumentative.
                You testified -- you testified that
11
          Ο.
     you became the acting treasurer of HCM --
12
13
     HCMFA; correct?
14
          Α.
                Yes.
15
          Q.
                How did that happen?
                MS. DANDENEAU: Again, object to
16
          form.
17
                MR. MORRIS: I can't wait to do this
18
19
          in a courtroom. Good God.
20
          Q.
                Go ahead, sir.
                I don't know the exact process of
21
          Α.
     how that happened.
22
                Do you have any idea whether signing
23
          Ο.
24
     this document was part of the process?
25
                MR. MORRIS: You know what --
```

```
Page 157
             WATERHOUSE - 10-19-21
 1
 2.
           MS. DANDENEAU: Objection.
           MR. MORRIS: -- withdrawn. You guys
 3
     want to do this, I can't wait. I can't
 4
     wait. This is the craziest stuff ever.
 5
 6
           MS. DANDENEAU: John, he said he's
 7
     not a lawyer, and you are asking him for a
     legal conclusion, and he says he doesn't
 8
 9
     know, and you persist.
10
           MR. MORRIS:
                        Okay.
           MS. DANDENEAU: So you can ask these
11
12
     questions --
13
           MR. MORRIS: Did anyone -- please
14
     stop talking.
15
           MS. DANDENEAU: -- at another
     point -- no, no, no, I'm entitled to talk,
16
                  If you're going to make these
17
     too; right?
     accusations as if we're trying to stonewall
18
     you, this is not the witness to ask that
19
20
     question.
           MR. MORRIS: I can't -- I can't
21
22
     wait -- I can't wait to do this in a
     courtroom. I will just leave it at that.
23
24
           MS. DANDENEAU: That's right, I'm
25
     sure you can't.
```

Page 158 WATERHOUSE - 10-19-21 1 Q. Did anyone ever tell you, sir, that even though you were the acting treasurer of 3 HCMFA, that you were not authorized to sign the 4 5 two promissory notes that we looked at before lunch? 6 I'm not sure I understand the 7 Α. I wasn't -- I mean, I'm -- I'm the 8 question. current acting treasurer. 9 Did anybody ever tell you at any 10 time that even though you were the acting 11 treasurer of HCMFA, that you were not 12 13 authorized to sign the two promissory notes 14 that we looked at before lunch? 15 MS. DANDENEAU: Objection to form. Α. Not that I recall. 16 Did anybody ever tell you at any 17 Ο. 18 time that you were not authorized to sign the two promissory notes that we looked at before 19 20 lunch? Not that I recall. 21 Α. 22 Did anybody ever tell you at any Ο. time that you should not have signed the two 23 24 promissory notes that we looked at before 25 lunch?

Page 159 WATERHOUSE - 10-19-21 1 Not that I recall. Α. Did you ever tell anybody at any 3 Ο. time that you weren't authorized to sign the 4 5 two promissory notes that we looked at before lunch? 6 7 Not that I recall. Α. Did you ever tell anybody at any 8 Ο. time that you made a mistake when you signed 9 the two promissory notes that we looked at 10 before lunch? 11 Not that I recall. 12 Α. 13 As you sit here right now, do you 0. 14 have any reason to believe that you were not 15 authorized to sign the two documents that we looked at before lunch? 16 17 MS. DANDENEAU: Objection to form. If -- if this is the -- the valid 18 Α. incumbency certificate, I mean, this does --19 20 this does detail who the signers are. Okay. And looking at that document, 21 0. does that give you comfort that you were 22 authorized to sign the two promissory notes 23 24 that we looked at before lunch? 25 MS. DEITSCH-PEREZ: Object to the

```
Page 160
                  WATERHOUSE - 10-19-21
 1
 2.
          form.
                MS. DANDENEAU: Objection, form.
 3
          Α.
 4
                Yes.
 5
                As of October 20th -- withdrawn.
          Ο.
 6
                I'm trying to take your mind back to
 7
     a year ago, October 2020. Do you recall at
     that time that the boards of the retail funds
 8
     were making inquiries about obligations that
 9
     were owed by the advisors to Highland in
10
     connection with their 15(c) review?
11
                MS. DANDENEAU: Objection to form.
12
13
          Α.
                I don't -- I don't recall.
14
          Q.
                As of October 2020, you had no
15
     reason to believe you weren't authorized to
     sign the two promissory notes that we just
16
     looked at; correct?
17
                MS. DANDENEAU: Objection, form.
18
19
                MS. DEITSCH-PEREZ: Objection to
20
          form.
                I didn't think about it in October
21
          Α.
     of 2020, but I mean --
22
                Did you have any reason to believe
23
          0.
24
     at that time that you weren't authorized to
     sign the two notes that we just looked at?
25
```

Page 161 WATERHOUSE - 10-19-21 1 Α. Not that I'm aware, no. Did you have any reason to believe a 3 Ο. year ago that you made a mistake when you 4 5 signed those two notes? 6 Α. Not that I'm aware. 7 Q. A year ago you believed that HCMFA owed Highland the unpaid principal amounts that 8 9 were due under those two notes; correct? They're -- they're promissory notes 10 Α. that were -- as you presented, that were --11 that were executed. Whether they're valid or 12 if there's other reasons, I didn't -- I don't 13 14 know. 15 I'm not asking you whether they're Ο. valid or not. I'm asking you for your state of 16 mind. A year ago you believed that HCMFA 17 was -- was obligated to pay the unpaid 18 principal amount under the two notes that you 19 20 signed; correct? Yeah, I'm -- I'm -- yes. 21 Α. 22 Thank you. Are you aware -- you're Ο. aware that -- that in 2017, NexPoint issued a 23 24 note in favor of Highland in the approximate amount of \$30 million; correct? 25

Page 162 WATERHOUSE - 10-19-21 1 Α. I'm -- I'm -- I'm generally aware. Okay. And are you generally aware 3 Ο. that from time to time, after the note was 4 issued by NexPoint, that moneys were applied to 5 6 principal and interest that were due under the 7 NexPoint note? Α. Yes, I'm generally aware. 8 Okay. And did anybody ever tell you 9 Q. that the payments that were made against the 10 NexPoint notes were made by mistake? 11 Α. 12 Yes. 13 And is it the one payment that we 14 talked about earlier today? 15 Α. We talked about a lot of things 16 today. What payment are we talking about? Okay. Who told you that any payment 17 0. made against the NexPoint note was made by 18 mistake? 19 20 Α. D.C. Sauter. When did Mr. Sauter tell you that? 21 Ο. I don't -- I don't remember 22 Α. specifically. 23 24 Do you remember what payments --Q. Sometime -- sometime this year. 25 Α.

```
Page 163
                  WATERHOUSE - 10-19-21
 1
                Sometime in 2021?
          Q.
          Α.
                Yes.
 3
                Do you remember what payment he was
 4
          Ο.
     referring to?
 5
 6
          Α.
                It was the -- the payment made in
 7
     January of 2021 or -- yeah, January of -- of
     this -- January of 2021.
 8
                Okay. So did anybody ever tell you
 9
          Q.
     at any time that any payment that was made
10
     against principal --
11
                And -- and -- and -- hold on, and it
12
          Α.
     may have been other -- again, it may have been
13
     that payment or -- or there may have been what
14
15
     he was explaining, a misapplication of prior
16
     payments as well.
                Can you -- can you give me any
17
     specificity -- withdrawn.
18
19
                Withdrawn. Can you tell me
20
     everything that Mr. Sauter told you about --
     about errors in relation to payments made
21
22
     against principal and interest due under the
     NexPoint note?
23
24
                MS. DANDENEAU: Can I just --
25
                MR. RUKAVINA: Hold on. Hold on.
```

```
Page 164
                  WATERHOUSE - 10-19-21
 1
          I'm going to object here, and I'm going to
          instruct the witness not to answer
 3
          depending on the discussion that you had --
 4
 5
          Mr. Waterhouse, I'm the lawyer for
 6
          NexPoint, and as everyone here knows, D.C.
 7
          Sauter is in-house counsel.
                So if you and Mr. Sauter were having
 8
          a factual discussion and him preparing his
 9
10
          affidavit, et cetera, then go ahead and
          answer that. But if you were having a
11
          discussion as to our legal strategy in this
12
13
          lawsuit, or anything having to do with
14
          that, then do not answer that.
15
                And if you need to talk to either
          your counsel or me about that, then we need
16
          to have that discussion now.
17
                Okay. Yeah, I don't -- I don't
18
          Α.
     really know how to make that distinction, so
19
20
     maybe I need to talk to counsel before I
21
     answer, or if I can answer.
22
                Let me just ask you this question:
          Ο.
     Did -- did you have any conversation with
23
24
     Mr. Sauter about any payment of principal and
25
     interest prior to the time that you left
```

Page 165 WATERHOUSE - 10-19-21 1 Highland's employment, or did it happen after 2. you left Highland's employment? 3 I don't -- I don't recall if -- I 4 don't recall. I mean, it was sometime in 2021. 5 I don't remember if it was before or after I 6 was let go from Highland. 7 Okay. So -- so nobody told you 8 Ο. prior to 2021 that any error or mistake was 9 made in the application of payments against 10 principal and interest due on the NexPoint 11 note. Do I have that right? 12 13 Α. Yeah, I don't -- I don't recall this 14 being in 2020. 15 Ο. Okay. And it didn't happen in 2019; 16 correct? 17 I don't recall that happened. Α. And it didn't happen in 2018; 18 Q. 19 correct? 20 Α. I don't -- I don't recall that happening. 21 22 And it didn't happen in 2017; Ο. 23 correct? 24 Α. I don't recall. 25 But -- but you believe the Q.

Page 166 WATERHOUSE - 10-19-21 1 conversation took place in 2021. You just 2. don't remember if it was before or after you 3 left Highland's employment. Do I have that 4 5 right? 6 Α. It was sometime this year. I don't -- I don't remember. 7 Okay. Did you report this 8 Ο. conversation to Mr. Seery at any point? 9 10 Α. I don't believe so. Did you report this conversation to 11 Q. anybody at DSI at any time? 12 13 Α. I don't recall. 14 Q. Do you have -- you don't have a 15 recollection of ever doing that; correct? Yeah, that's right. I don't recall 16 Α. doing that. 17 Do you recall telling anybody at 18 Ο. Pachulski Stang about the conversation you 19 recall with Mr. Sauter? 20 No, I don't -- I don't recall. 21 Α. 22 Did you tell any of the independent Ο. board members about your conversation with 23 24 Mr. Sauter? 25 I don't recall. Α.

Page 167 WATERHOUSE - 10-19-21 1 Did you tell any of the employees at 2. Ο. Highland before you left Highland's employment 3 about this call that you had with Mr. Sauter? 4 5 MS. DANDENEAU: Objection to form. No, I don't -- no, I don't recall. 6 Α. 7 NexPoint -- to the best of your Ο. knowledge, did NexPoint ever file a proof of 8 9 claim against Highland to try to recover moneys that were mistakenly paid against the principal 10 and interest due under the note? 11 12 Α. Okay. Hold on. You are saying did 13 NexPoint Advisors file a proof of claim to 14 Highland for errors related to payments under 15 the NexPoint note to Highland? 16 Ο. Correct. I'm -- I'm -- I'm not -- I'm not 17 Α. 18 aware. 19 Ο. Are you aware --20 Α. I'm not the legal person here, I don't know. 21 22 I'm just asking for your knowledge, Ο. sir. 23 24 Α. Yeah, I don't know. I'm not aware. 25 Are you aware of any claim of any Q.

Page 168 WATERHOUSE - 10-19-21 1 kind that NexPoint has ever made to try to 2. recover the amounts that it contends were -- or 3 that Mr. Sauter contend were mistakenly applied 4 5 against principal and interest due under the NexPoint note? 6 7 Α. I'm not aware. MS. DANDENEAU: Objection to form. 8 Q. Okay. The advisors' agreements with 9 the retail funds are subject to annual renewal; 10 11 correct? Α. 12 Yes. 13 Ο. And do you participate in the 14 renewal process each year? 15 Α. Yes. What role do you play in the renewal 16 Ο. 17 process? I'm -- I'm asked by the retail board 18 Α. to walk-through the advisors financials. 19 20 Ο. And do you do that in the context of a board meeting? 21 22 Yes, it is -- yes, it is typically Α. done in a board meeting. 23 24 And do you recall the time --Ο. does -- does the renewal process happen around 25

Page 169 WATERHOUSE - 10-19-21 1 the same time each year? Yes, it is -- it is around the same 3 Α. time every year. 4 And what -- what time period of the 5 Ο. 6 year does the renewal process occur? 7 Approximately the September Α. timeframe. 8 9 During that process, in your Q. experience, does the board typically conduct 10 its own diligence and ask for information? 11 Α. Does the board ask for lots of -- I 12 13 mean, just -- I mean, lots of information as a 14 part of that -- that -- as part of that board 15 meeting and that process. Okay. And do you recall that the 16 Ο. process in 2020 spilled into October? 17 Yes. Yes. 18 Α. 19 Okay. And as part of the process in Ο. 20 2020, the retail board asked -- asked what are referred to as 15(c) questions; right? 21 22 I quess I don't want to be -- they Α. asked 15(c) -- are you saying they asked 15(c) 23 24 questions and this is why it went into October

25

or --

```
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                   WATERHOUSE - 10-19-21
 1
          Ο.
                No, I apologize.
                Do you have an understanding of
 3
     what -- of what 15(c) refers to in the context
 4
 5
     of the annual renewal process?
 6
          Α.
                Yes, generally.
 7
                All right. What is your general
          Q.
     understanding of the term "15(c)" in the
 8
 9
     context of the annual renewal process?
          Α.
                I -- I think 15(c) is the section
10
     that -- that -- you know, that -- that the
11
     board has to evaluate every year, the retail
12
13
     board.
             They have to, you know, go through,
14
     evaluate, and go through that approval process
15
     on a yearly basis.
16
          Q.
                Okay.
17
                MR. MORRIS: Can we put up on the
          screen Exhibit 36, please.
18
                 (Exhibit 36 marked.)
19
20
                MR. MORRIS:
                              I quess let's just
          start at the bottom so Mr. Waterhouse can
21
22
          see what is here.
                You see this begins with an email
23
          Ο.
24
     from Blank Rome to a number of people.
25
                MR. MORRIS: And if we can scroll
```

```
Page 171
                   WATERHOUSE - 10-19-21
 1
          up -- keep going just a little bit.
 2.
                You will see that there is an email
 3
          Ο.
     from Lauren Thedford to Thomas Surgent and
 4
 5
     others where she reports that she was attaching
 6
     and reproducing below additional 15(c)
 7
     follow-up questions from the board.
                Do you see that?
 8
 9
          Α.
                Yes.
                And do you see Question No. 2 asks
10
     whether there are any material outstanding
11
     amounts currently payable or due in the future
12
13
     (e.g., notes) to HCMLP by HCMFA or NexPoint
14
     Advisors or any other affiliate that provides
15
     services to the funds?
16
                Do you see that?
                Yes.
17
          Α.
                And -- and did you -- do you recall
18
          Ο.
     that in -- in October of 2020 the retail boards
19
20
     were asking for that information?
                I don't recall it, but there --
21
          Α.
22
     they're obviously asking in this email.
23
          Q.
                Okay.
24
                MR. MORRIS: Can we scroll up a
25
          little bit, please.
```

Page 172 WATERHOUSE - 10-19-21 1 And then do you see that Q. Ms. Thedford includes you on the email string 3 on Tuesday, October 6th, at 5:52? 4 5 Α. Yes. 6 Ο. And she asks you and Dave Klos and 7 Kristin Hendrix for advice on that particular Request No. 2 that I have just read; right? 8 9 Α. Yes. Okay. Can you tell me who 10 Ms. Thedford is? 11 She was an attorney that was in the 12 Α. legal group. 13 14 Ο. At Highland Capital Management, 15 L.P.? I'm -- I'm -- I'm -- I don't 16 Α. remember if she was an employee of Highland or 17 any of the advisors. 18 19 Okay. Do you know if she served as 0. the corporate secretary for both HCMFA and 20 NexPoint? 21 22 Α. Yes. 23 Q. And -- okay. 24 Do you know whether Ms. Thedford held any positions in relation to the retail 25

Page 173 1 WATERHOUSE - 10-19-21 funds as we defined that term? Α. Yes. 3 What is your understanding of the 0. 4 positions that Ms. Thedford held at the retail 5 funds? 6 7 I -- I recall her being an officer. Α. I don't recall her title. Is she still an officer at 9 Okay. Q. any of the retail funds today? 10 Α. 11 No. Do you know when she ceased to be an 12 Q. officer of the retail funds? 13 14 Α. Approximately. 15 And when did she approximately cease Q. to be an officer of the retail funds? 16 It was in -- it was in early of 17 Α. 2021. 18 Okay. Do you know when she became 19 Ο. 20 an officer of the retail funds? I don't recall. 21 Α. To the best of your recollection, 22 Ο. was she an officer of the retail funds in 23 24 October of 2020? 25 I believe so. Α.

Page 174 WATERHOUSE - 10-19-21 1 Q. Okay. Do you know what title she held in her capacity as an officer, if any? 3 I told you I don't remember. 4 Α. 5 Okay. So she sends this email to Ο. 6 you at 5:52 p.m. on October 6th. 7 And if we can scroll up to the response, you responded a minute later with a 8 9 one-word answer: Yes. 10 Do you see that? Α. 11 Yes. And -- and yes is -- yes was in 12 Q. 13 response to the retail board's Question No. 2, 14 right, whether there are any material 15 outstanding amounts currently payable or due in the future? 16 17 Yes. Α. 18 MR. MORRIS: And can we scroll up to 19 see what happened next. 20 So Ms. Thedford writes back to you a Ο. few minutes later and she asks whether you 21 could provide the amounts. 22 23 Do you see that? 24 Α. Yes. And then you respond further and you 25 Q.

Page 175 WATERHOUSE - 10-19-21 1 refer her to the balance sheet that was provided to the board as part of the 15(c) 3 4 materials. 5 Do you see that? 6 Α. Yes. 7 And -- and did the advisors provide Q. to the board certain balance sheets in 2020 in 8 connection with the 15(c) review? 9 10 Α. Yes, they did. Okay. And were the amounts that 11 Ο. were outstanding or that were to be due in the 12 13 future by the advisors to Highland included in the liability section of the balance sheet that 14 15 was given to the retail board? Notes would be reflected as 16 Α. Yes. liabilities. 17 Okay. And --18 Ο. 19 If I'm understanding your question Α. 20 correctly. You are. And -- and -- and those 21 Ο. 22 liabilities you -- you were -- you believed were responsive to the retail board's question; 23 24 correct? 25 Α. Yes.

Page 176 WATERHOUSE - 10-19-21 1 Q. Okay. And then if we can scroll up, you see Ms. Thedford responds to you 3 nine minutes later with a draft response. 4 5 Do you see that? 6 Α. Yes. 7 And she says that she is taking from Ο. the 6/30 financials certain information about 8 amounts that were due to HCMLP and affiliates 9 as of June 30th, 2020. 10 Do you see that? 11 Α. I do. 12 13 Okay. And did you believe, as the Ο. treasurer of NexPoint and HCMFA and as the CFO 14 15 of Highland, that the information that Ms. Thedford obtained from the 6/30 financials 16 was accurate and responsive in relation to the 17 retail fund board's question? 18 19 I just want to make sure I Α. 20 understand the question. Are you saying that the financial 21 22 information provided to the retail board as part of the 15(c) process, which included 23 24 financial statements as of June 30th of 2021, 25 did I feel like those were responsive to their

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 1
                  WATERHOUSE - 10-19-21
     questions?
 2.
 3
          Q.
                Yes.
 4
          Α.
                Yes.
 5
          Q.
                Thank you.
 6
                MS. DEITSCH-PEREZ: John, it is not
 7
          in the chat yet. Can you just make sure it
          gets put in there.
 8
 9
                MR. MORRIS: Sure.
10
                MS. CANTY: I put it in there.
          think maybe I just sent it directly, so let
11
          me make sure it says to everyone. But I
12
13
          did put it in there. I will try again.
14
                MR. MORRIS: Thank you, La Asia.
15
                MS. DANDENEAU: What number is it.
16
                MR. MORRIS: What, the Bates number?
17
                MS. DEITSCH-PEREZ: No, the --
          this -- yeah, 36 is not in the chat.
18
19
                MR. MORRIS: Okay. We'll get it.
20
                MS. DANDENEAU: I think that
          Ms. Canty just sent it to me originally.
21
22
          Sorry.
                MR. MORRIS: Okay. We will get it
23
24
          there.
25
                MS. CANTY: Okay. It is there now
```

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Page 178
                  WATERHOUSE - 10-19-21
 1
          for everyone.
                MS. DEITSCH-PEREZ: Got it.
                                               Thank
 3
 4
          you.
 5
                Do you recall if the proposed
          Ο.
 6
     response that Ms. Thedford crafted was
 7
     delivered to the retail board with the -- with
     the yellow dates having been completed?
 8
 9
          Α.
                I don't know.
10
                MR. MORRIS: Davor, I'm going to ask
          that the advisors and -- the advisors of
11
12
          both HCMFA and NexPoint produce to me any
13
          report that was given to the retail board
14
          concerning the promissory notes at issue,
15
          including the obligations under the notes.
16
                Do you know -- do you know if
          Ο.
     ultimately NexPoint informed the retail board
17
     in response to its question that NexPoint owed
18
19
     Highland approximately 23 or $24 million?
20
                MS. DANDENEAU: Objection to the
          form.
21
22
                Sorry, are you asking, did NexPoint
          Α.
     tell the retail board that it owed Highland?
23
24
                Let me ask a better question,
          Ο.
25
     Mr. Waterhouse.
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Page 179 WATERHOUSE - 10-19-21 1 Did -- do you know if anybody ever 2. answered the retail board's question that was 3 Number 2? 4 5 Α. I don't -- I can't say for sure. 6 Ο. Okay. Do you recall -- I think you 7 testified earlier that you walked through the advisors' financials with the retail board; 8 9 correct? 10 Α. Yes. And as part of that process, did you 11 Ο. disclose to the retail board the obligations 12 13 that NexPoint and HCMFA had to Highland under promissory notes? 14 15 Α. The retail board, as I stated earlier, receives financial information, 16 balance sheet, income statement information 17 from the advisors. That information is 18 19 provided to the retail board in connection with 20 the 15(c) process. So any notes between the advisors 21 22 and the Highland would be -- anything would be detailed in those financial statements. 23 24 Do you recall in 2020 ever speaking Ο. with the retail board about the advisors' 25

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Page 180
                  WATERHOUSE - 10-19-21
 1
 2.
     obligations under the notes to Highland?
                MS. DANDENEAU: Objection to form.
 3
                MS. DEITSCH-PEREZ: Object to the
 4
 5
          form.
 6
          Α.
                I don't recall specifically.
 7
                Do you have any general recollection
          Ο.
     of discussing with the retail board the
 8
     advisors' obligations to Highland under the
 9
     notes that they issued?
10
                MS. DANDENEAU: Object to the form.
11
                MS. DEITSCH-PEREZ: Object to the
12
13
          form.
14
          Α.
                I just recall generally just -- it
15
     is just -- I present the financial statements,
     and if they have questions, I answer their
16
     questions and walk them through.
17
                I don't recall what they asked.
18
                                                   Ι
     don't recall where the discussion went.
19
20
     don't recall anything of that nature.
                Okay. Do you know if anybody on
21
          Ο.
22
     behalf of HCMF -- HCMFA ever told the retail
     board that HCMFA had no obligations under the
23
24
     two 2019 notes that you signed?
                                       Withdrawn.
25
                Do you know whether anybody on
```

Page 181 WATERHOUSE - 10-19-21 1 behalf of HCMFA ever told the retail boards 2. that you weren't authorized to sign either of 3 the two 2019 notes? 4 5 MS. DANDENEAU: Objection to form. 6 Α. I'm not aware. 7 Are you aware of anybody on behalf Ο. of HCMFA ever telling the retail boards that 8 your execution of the two 2019 notes was a 9 mistake? 10 MS. DANDENEAU: Objection to form. 11 Α. I'm not aware. 12 13 Are you aware of anybody on behalf Ο. 14 of HCMFA ever telling the retail boards that 15 HCMFA did not have to pay the amounts reflected 16 in the two notes that you signed in 2019? 17 Α. I'm not aware. Do you know whether anybody ever 18 Q. told the retail boards -- withdrawn. 19 20 Do you know whether anybody ever told the retail boards that Highland has 21 22 commenced a lawsuit to recover on the two notes that you signed in 2019? 23 24 Α. I'm not aware. Are you aware of anybody informing 25 Q.

Page 182 WATERHOUSE - 10-19-21 1 the retail boards that Highland has sued to recover on the NexPoint note? 3 I'm not aware. 4 Α. Do you know whether anybody ever 5 Ο. 6 told the retail board that Highland had 7 declared a default with respect to the two HCMFA notes that you signed in 2019? 8 9 Α. I'm not aware. 10 Are you aware of anybody ever Ο. informing the retail boards that Highland had 11 declared a default under the NexPoint note? 12 13 Α. I'm not aware. 14 Q. Are you aware of anybody telling the retail board that Highland made a demand for 15 16 payment under the 2019 notes that you signed on behalf of HCMFA? 17 18 Α. I'm not aware. Let's -- let's see if there is a 19 0. 20 response to Ms. Thedford's email, if we can scroll up. 21 22 Do you see you responded to Ms. Thedford five minutes after she provided 23 24 the draft response to you? 25 Α. Yes.

Case 3:21-cv-00881-X Docume Exhibits 148 Pitage 023/29/02446 Page 151 of 200 Page ID 54673 Page 183 WATERHOUSE - 10-19-21 1 Ο. Okay. And do you see that Dustin Norris is copied on this email? 3 Yes, he is. 4 Α. Great. Do you know whether 5 Ο. 6 Mr. Norris held any positions at either of the 7 advisors as of October 6, 2020? I will go back to -- I'm not the 8 Α. legal expert of what appoints you or how or 9 why, but you did see Dustin's name on the 10 incumbency certificate that you produced 11 earlier. 12 13 Do you know what his title was in October of 2020? 14 15 MS. DANDENEAU: Objection to form. Α. I don't -- I don't recall. 16 Was he -- did he have a title with 17 Ο. each of the advisors, to the best of your 18 recollection? 19 20 Α. I don't recall. Do you know why he is included on 21 Ο. 22 this email string? I didn't add Dustin. It looks like 23 Α.

Lauren did.

24

I don't know why she added him or

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- Q. Does Mr. Norris play a role in
- 3 formulating the advisors' responses to the
- 4 questions asked by the retail board in
- 5 connection with the 15(c) annual review?
- 6 MS. DANDENEAU: Objection to form.
- 7 A. He -- Dustin Norris is there in the
- 8 board meetings. But -- so he has a role, yes.
- 9 Q. Okay. And does Mr. Norris hold any
- 10 positions, to the best of your knowledge, in
- 11 relation to any of the retail funds?
- 12 A. I don't -- I don't believe he does.
- Q. How about Mr. Post, do you know
- 14 whether Mr. Post holds any position in either
- 15 of the advisors?
- 16 A. I mean, he -- he -- yes.
- 17 Q. What is your understanding of the
- 18 positions that Mr. Post holds in relation to
- 19 the advisors?
- MS. DANDENEAU: Objection to form.
- 21 A. He is an employee of NexPoint
- 22 Advisors. He is also the chief compliance
- 23 officer for -- for NexPoint.
- Q. Who is the chief compliance officer
- 25 for HCMFA, if you know?

Page 185 WATERHOUSE - 10-19-21 1 MS. DANDENEAU: Objection to form. Α. That would be Jason as well. 3 Okay. Now, looking at your 4 Ο. 5 response, you noted initially that nothing was owed under shared services. Do I have that 6 7 right in substance? Α. Yeah. I think I'm being responsive 8 to Lauren's question here, whether any of the 9 shared service invoices are outstanding. 10 Right. 11 Q. Α. 12 Yes. 13 Ο. And that is because -- and that is 14 because the retail the retail board has asked 15 for the disclosure of all material obligations that were owed to HCMLP either then or in the 16 future; isn't that right? 17 MS. DANDENEAU: Objection to form. 18 19 We can go back down and look. Ο. 20 Α. Look, I don't know if that's a material item, I mean, again, but sure. 21 22 Okay. But there were no shared Ο. services outstanding; correct? 23 24 MS. DANDENEAU: Objection to form. 25 That is what this email seems to Α.

Page 186 WATERHOUSE - 10-19-21 1 2. indicate. And you wouldn't have written it if 3 Ο. you didn't believe it to be true at the time; 4 5 correct? 6 Α. Correct. 7 And when you referred to shared Q. services outstanding, what you meant there was 8 9 that neither NexPoint nor HCMFA owed Highland any money under the shared services agreements 10 that they had with Highland as of October 6th, 11 2020; right? 12 13 Α. I don't know if it is as of October 14 6, 2020 or if it was from -- like through the 15 financials -- through the date of the financials as of June 30. 16 Okay. And then you noted that 17 Ο. HCMA -- the HCMFA note is a demand note; right? 18 19 Α. Yes. 20 And then you referred Ms. Thedford Ο. to Kristin Hendrix for the term of the NexPoint 21 22 note. Do I have that right? 23 Α. Yes. 24 And then you refer to that agreement Ο. that is referenced in the 2018 audited 25

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- 2 financials about Highland's agreement not to
- 3 make demand upon HCMFA until May 2021; correct?
- 4 A. Correct.
- 5 Q. And then -- and then the next thing
- 6 you write is that the attorneys think that BK
- 7 doesn't change that, but don't know for sure at
- 8 the end of the day.
- 9 Do you see that sentence?
- 10 A. Yes.
- 11 Q. Which attorneys were you referring
- 12 to?
- 13 A. I don't remember.
- Q. Did you have a conversation with
- 15 attorneys concerning whether the bankruptcy
- 16 would change or alter in any way the agreement
- 17 not to make a demand under the HCMFA note?
- 18 A. Look, yeah, I mean, I don't
- 19 specifically remember, but generally, I mean,
- 20 it is in this email. I don't -- I don't -- I
- 21 don't -- I don't remember who I talked to or,
- 22 you know, was it inside counsel, outside
- 23 counsel, but obviously I talked to somebody.
- Q. Do you have any recollection --
- 25 A. Well, I don't even know if it's --

Case 3:21-cv-00881-X Docume Exhibits 148 Piteme (22) 70 90/2446 Page 156 of 200 Page ID 54678 Page 188 WATERHOUSE - 10-19-21 1 actually, it may not even have been me. I say 2. the attorneys in, you know, a lot of -- like I 3 talked about the team. 4 5 It could have been someone on the 6 team, like, hey, we need to run this down, and maybe they talked to attorneys again and 7 relayed that information to me. 8 9 So I really don't know if I spoke or someone else did or -- or, I mean, and maybe it 10 wasn't even from corporate accounting. Maybe 11 it was, you know, other -- I'm kind of 12 13 summarizing, you know, again, so I don't really know -- I can't really say for sure. I don't 14 15 remember how I came about of this knowledge. 16 Ο. I appreciate your efforts, Mr. Waterhouse, but I will just tell you that if I ask a question and you don't know the 18 answer or you don't recall, I'm happy to accept

- 17
- 19
- 20 I don't -- I don't want you to
- speculate, so I want to be clear about that. 21
- 22 So I appreciate it.
- Let me just ask you simply: Do you 23
- 24 know what attorneys -- can you identify any of
- 25 the attorneys who thought that the bankruptcy

Page 189 WATERHOUSE - 10-19-21 1 process didn't change the agreement? Α. I don't recall. 3 0. Okay. Perfect. 4 And then let's look at the last 5 6 sentence. It says, quote: The response should 7 include, as I covered in the board meeting, that both entities have the full faith and 8 backing from Jim Dondero, and to my knowledge 9 that hasn't changed. 10 Do you see that? 11 Α. 12 Yes. 13 Ο. Okay. Prior to October 6th, 2020, had you told the retail board that HCMFA and 14 15 NexPoint have the full faith and backing from Jim Dondero? 16 17 Α. Yes. Do you remember in the context in 18 Q. which you told the retail board that? 19 20 Α. I mean, generally, yes. Tell me what you recall. 21 Ο. 22 So we were walking through the Α. financials from the advisors; right? So as I 23 described to you, you have got HCMFA and NPA. 24 And these -- the financials, you know, show 25

Page 190 WATERHOUSE - 10-19-21 1 they have liabilities on them that exceed assets. 3 So the retail board has asked, okay, 4 you know, how -- you know, if -- if these 5 6 liabilities come due or they're payable, you know, how does that come about? 7 And, you know, the response is, 8 well, the advisors have the -- the full faith 9 and backing from -- from Jim Dondero. 10 And how did you know that the 11 advisors had the full faith and backing from 12 13 Jim Dondero? What was the basis for that 14 statement that you made to the retail board? 15 Α. I talked to Jim about it at some 16 point in the past. And did you tell Mr. Dondero that 17 you were going to inform the retail board that 18 the advisors had his full faith and backing 19 20 before you actually told that to the retail board? 21 I don't recall having that 2.2 conversation. 23 24 Do you recall if you ever informed Ο. Mr. Dondero that you had disclosed or told the 25

Page 191 WATERHOUSE - 10-19-21 1 retail board that the advisors had the full faith and backing of Mr. -- Mr. Dondero? 3 MS. DEITSCH-PEREZ: Object to the 4 form. 5 6 Α. I don't recall discussing that with 7 him at the time. When you told this to the board, was 8 Ο. Mr. Dondero participating in the discussion? 9 10 Α. Not that I recall. Withdrawn. Was it not -- withdrawn. 11 Q. Do you recall whether -- when you 12 13 covered this issue with the board, was that in 14 a -- a Zoom call or a Webex call? Was it a 15 telephone call? Was it in-person? Like where were you physically in relation to the board? 16 I believe I was at home. 17 Α. Okay. Can you identify every person 18 Q. 19 that you recall who was present for this 20 disclosure other than -- other than the board members themselves? 21 22 MS. DEITSCH-PEREZ: Object to the 23 form. 24 I don't recall everyone on the call. Α. Can you identify anybody who was on 25 Q.

Page 192 WATERHOUSE - 10-19-21 1 the call? 2. Α. Other than the board members? 3 0. 4 Yes. Lauren Thedford. I mean, there 5 Α. 6 are -- there are many -- my section is just one 7 of many sections that are just -- you know, as you can appreciate, this is a long board 8 meeting. 9 I can't recall specifically, really 10 even generally, or who was on when this was 11 discussed. But Lauren was typically on for the 12 13 entire time. 14 I apologize if I asked you this, but 15 do either of Mr. Norris or Mr. Post hold any positions relative to the retail funds? 16 I think you asked me this already, 17 Α. 18 John. Okay. I just don't recall. Can you 19 Ο. 20 just refresh my recollection if I did, in fact, ask you the question? 21 22 I don't believe -- if we can go Α. I don't believe Mr. Norris has a title 23 24 at the retail funds. Mr. -- and Mr. Post is the CCO of the advisor, the advisors. 25

Page 193 WATERHOUSE - 10-19-21 1 Okay. Do you know if either of them Ο. have a position with the retail board -- with 3 the retail funds? 4 I don't believe Mr. Norris has a 5 Α. 6 position with the retail funds. 7 All right. What about Mr. Post? Q. Mr. Post is the CCO of the advisors. Α. 8 9 Okay. Does he hold any position --Q. 10 I don't believe so. Α. -- with the retail funds? 11 Q. I don't believe so. 12 Α. 13 Q. Okay. I don't know if being the CCO for 14 Α. 15 the advisor conveys something for the retail funds. Again, I am not -- that is the legal 16 compliance part of it. I don't know. 17 Why did you tell the retail board 18 Ο. that the advisors have the full faith and 19 20 backing from Mr. Dondero? MS. DANDENEAU: Objection to form. 21 It is -- it is -- it is what has 22 Α. been discussed with them prior. 23 24 And were you -- were you trying to Ο. 25 give them comfort that even though the

Page 194 WATERHOUSE - 10-19-21 1 liabilities exceeded the assets that the 2. advisors would still be able to meet their 3 obligations as they become due? 4 MS. DANDENEAU: Objection to form. 5 6 MS. DEITSCH-PEREZ: Object form. 7 I -- I can't -- I don't remember Α. specifically the conversation, but generally --8 you know, generally, yes. And that is why --9 but, you know, again, in this email saying, you 10 know, I am sure I qualified it with the retail 11 board, you know, as I said I like -- you know, 12 to my knowledge, that hasn't changed. But, 13 again, generally -- generally that is what I 14 15 remember. Okay. Do you recall if in the 16 Ο. advisors' response to the retail board's 17 question if the response included any statement 18 19 concerning Mr. Dondero and -- and the full 20 faith and backing that he was giving to the advisors? 21 22 MS. DEITSCH-PEREZ: Object to the 23 form. 24 I don't -- I don't remember Α. 25 specifically what was provided.

```
Page 195
                   WATERHOUSE - 10-19-21
 1
          Q.
                Okay.
                And I don't really -- I don't really
 3
          Α.
     remember generally either.
 4
 5
          Ο.
                Okay.
 6
                MR. MORRIS: So -- so, again, I'm
 7
          just going to ask Mr. Rukavina if your
          clients can produce as soon as possible the
 8
 9
          15(c) response, the written response that
10
          the advisors made, if any, to the board's
          Ouestion No. 2.
11
                I'm not looking for the whole
12
13
          response, but I certainly want the response
14
          to Question No. 2.
15
                Do you have a general understanding
          Q.
     as to the amount by which -- withdrawn.
16
                Did -- did the assets of --
17
     withdrawn.
18
                Did the liabilities of HCMFA exceed
19
20
     its assets in 2020?
                MS. DANDENEAU: Objection to form.
21
22
                MS. DEITSCH-PEREZ: Objection, form.
                I believe I have already answered
23
          Α.
24
     that question earlier, I think. I believe I
25
     said yes.
```

```
Page 196
                  WATERHOUSE - 10-19-21
 1
                Okay. And did the liabilities of
          Q.
     NexPoint exceed its assets in 2020?
 3
                MS. DEITSCH-PEREZ: Objection to
 4
 5
          form.
                I don't believe so.
 6
          Α.
 7
                Okay. So -- so it was only one of
          Q.
     the two advisors who had liabilities that
 8
     exceeded the value of the assets.
 9
10
                Do I have that right?
                MS. DEITSCH-PEREZ: Objection to
11
          form.
12
13
                MS. DANDENEAU:
                                 Form.
14
          Α.
                Yes.
15
                And do you know, ballpark, the
          Q.
     amount by which the value of HCMFA's
16
     liabilities exceeded their assets in 2020?
17
                MS. DANDENEAU: Objection to form.
18
                I don't -- I don't recall.
19
          Α.
20
                MR. MORRIS: I had specifically
          requested in discovery the audited
21
22
          financial reports for both advisors and
          NexPoint. I think I may have gotten one
23
24
          for NexPoint but I'm still waiting for the
25
          balance. And I'm going to renew my request
```

```
Page 197
                  WATERHOUSE - 10-19-21
 1
          for those documents too.
                Let's go to the next exhibit, which
 3
          Ο.
     is Number 10. So I think it is in your stack,
 4
 5
     Mr. Waterhouse.
 6
                MR. MORRIS: And we can take the one
 7
          down from the screen and put up Number 10
          for everybody.
 8
                (Exhibit 10 marked.)
 9
                And I don't know if you have ever
10
          Ο.
     seen this before, but I'm really putting it up
11
     on the screen for purposes of turning to the
12
     very last page of the document.
13
14
                So this is a document that we have
15
     been -- that we premarked as Exhibit 10. And
     we're turning to the last page of the document,
16
     which is a document that was filed in the
17
     adversary proceeding 21-3004. And -- no, I
18
     apologize, I think we -- right there. Perfect.
19
20
                And it is page 31 of 31.
                MR. MORRIS: I think there may have
21
          been some something erroneously stapled to
22
          the hard copy that I gave you folks, but
23
          I'm looking for page 31 of 31 in the
24
25
          document that begins with the first page of
```

Page 198 WATERHOUSE - 10-19-21 1 Exhibit 10. 2. Do you have that, Mr. Waterhouse? 3 Ο. I don't have it yet. I'm looking. 4 Α. All right. If you look at the top 5 Ο. 6 right-hand corner, you will see it says page 7 hopefully something of 31? Α. Yes, I've got it now. 8 9 Okay. You have got 31 of 31. You Q. can take a moment to read that, if you would 10 like. 11 12 (Reviewing document.) Okay. Α. 13 Ο. Have you ever seen this before? 14 Α. I don't know if I have seen this 15 specific document, but, you know, I've --I'm -- I'm aware of it. 16 And is this the document that you 17 18 had in mind when you sent that email to 19 Ms. Thedford that we just looked at where you 20 said that Highland had agreed not to make a demand upon HCMFA until May 2021? 21 22 Honestly, I don't -- it wasn't this Α. I mean, it's something like this, 23 document. 24 yes. I mean, yes. 25 Well --Q.

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- 1 WATERHOUSE 10-19-21
- A. It is something like this, but I
- 3 don't think it was this specific document.
- 4 Q. Well, but this document does say in
- 5 the last sentence that Highland agreed not to
- 6 seek -- not to demand payment from HCMFA prior
- 7 to May 31, 2021; right?
- 8 A. Yes.
- 9 Q. And are you aware of any other
- 10 document that was ever created pursuant to
- 11 which Highland agreed not to demand payment on
- amounts owed by HCMFA before May 31, 2021?
- 13 A. Hold on. Are you asking, am I aware
- of a document that by HCMFA that basically says
- 15 otherwise?
- 16 Q. No. Let me try again.
- 17 Are you aware of any other document
- 18 pursuant to which -- pursuant to which Highland
- 19 agreed not to make a demand on HCMFA until May
- 20 31st, 2021?
- 21 A. I'm -- I think there was something
- 22 in connection with -- with the -- with the
- 23 audit that basically says the same thing.
- Q. Okay. And do you think that the
- 25 audit is referring to this particular document?

Page 200 WATERHOUSE - 10-19-21 1 I don't know. 2. Α. All right. This document is dated 3 Ο. April 15, 2019. Do you see that? 4 5 Α. I do. 6 Ο. And do you remember that the audit 7 was completed on June 3rd, 2019? Α. Yes. 8 9 And do you recall that the audited Q. financials -- and I'm happy to pull them up if 10 you would like, but do you recall that the 11 audited financials included a reference to the 12 13 agreement pursuant to which Highland agreed not 14 to make a demand until May 31st, 2021? 15 Α. Yes, I remember. 16 Ο. And as part of the process, would you have expected the corporate accounting team 17 to have provided a copy of this document to 18 19 PwC? 20 MS. DANDENEAU: Objection to form. Yes, I would have expected something 21 Α. 22 like this, or again, you know, some document that basically states -- states the deferral 23 24 till May 31 of 2020. 25 Q. Okay.

Page 201 WATERHOUSE - 10-19-21 1 2. May 31 of 2021, excuse me. Α. And this document states the 3 Ο. deferral that you just described; correct? 4 5 It does. Α. And this document states the 6 Ο. 7 deferral that was described in the audited financial statements that we looked at before; 8 9 correct? 10 Α. It does. MR. MORRIS: Okay. Can we scroll 11 down just a little bit to see who signed on 12 13 behalf of the acknowledgment there. 14 Q. Okay. So Mr. Dondero signed this 15 document on behalf of both HCMFA and Highland; do you see that? 16 I do. 17 Α. Okay. Did you discuss this document 18 Q. or the -- withdrawn. 19 20 Did you discuss the concept of the deferral with Mr. Dondero in the spring of 21 2.2 2019? I think I testified I don't recall. 23 Α. 24 Q. Okay. Do you know whose idea it was to issue the acknowledgment in this form? 25

Page 202 WATERHOUSE - 10-19-21 1 I don't recall. Α. MR. MORRIS: Can we scroll back up 3 to the document, please. 4 Do you see in the beginning it says, 5 Ο. 6 reference is made to certain outstanding 7 amounts loaned from Highland to HCMFA for funding ongoing operations. 8 9 Do you see that? 10 Α. Yes. And were you aware as the CFO of 11 Ο. Highland and as the treasurer of HCMFA that as 12 13 of April 15, 2019, Highland had made certain 14 loans to HCMFA to fund HCMFA's ongoing 15 operations? 16 Α. Yes. And were you aware that those loans 17 were payable on demand and remained outstanding 18 as of December 31st, 2018? 19 20 Α. Yes. And were you aware that those 21 Ο. amounts were payable on demand, and they 22 remained outstanding as of April 15, 2019? 23 24 MS. DEITSCH-PEREZ: Object to the 25 form.

Page 203 WATERHOUSE - 10-19-21 1 Well, this -- this document dated 2. Α. April 15, 2019 says they have been deferred to 3 May 31, 2021. 4 Right. But I'm just sticking to the 5 Ο. 6 first paragraph where they refer to the 7 outstanding amounts. And in the end it says the -- it remained outstanding on December 8 31st, 2018, and I think you told me that you 9 understood that, and then I'm just trying to 10 capture the last piece of it. 11 Did you understand that there were 12 13 amounts outstanding from the loan that Highland 14 made to HCMFA to fund ongoing operations as of 15 April 15th, 2019? 16 Α. Yes. Thank you. Let's look at the next 17 Ο. 18 sentence. HCMFA expects that it may be unable 19 to repay such amounts should they become due 20 for the period commencing today and continuing through May 31st, 2021. 21 22 Do you see that? 23 MS. DANDENEAU: Objection to form. 24 Α. I do. 25 As the CFO -- withdrawn. Q.

Page 204 WATERHOUSE - 10-19-21 1 As the treasurer of HCMFA, did you 2. believe that -- do you believe that statement 3 was true and accurate at the time it was 4 5 rendered? 6 Α. I mean, it -- it -- the answer to 7 that is I really didn't have any -- I didn't have an opinion really. 8 9 Did you do anything to educate Q. yourself in April of 2019 on the issue of 10 whether HCMFA could repay the amounts that it 11 owed to Highland should they become due? 12 13 Α. I don't believe so. 14 Q. Did you at any time form any 15 opinions as to HCMFA's ability to repay all amounts due to Highland should they become due? 16 Not really. I quess I don't... 17 Α. Well, you told the retail board that 18 Q. HCMFA's liabilities exceeded their assets in 19 20 2020; correct? 21 Α. Yes. Based on the work that you did to 22 Ο. prepare for the retail board, did you form any 23 24 view as to whether HCMFA would be unable to 25 repay the amounts that it owed to Highland

Page 205 WATERHOUSE - 10-19-21 1 should they become due? MS. DANDENEAU: Objection to form. 3 Α. I mean, I -- when you look at that, 4 5 to answer you, completely, you know, again, 6 if -- the response I gave the retail board was, you know, the -- the advice -- HCMFA advisors 7 have the -- have the full faith and backing of 8 Jim Dondero. So I didn't form an opinion of 9 whether the advisor could pay it or not. 10 Did you form any view as to whether 11 the advisors could repay the amounts that it 12 owed to Highland should they become due without 13 the full faith and backing of Mr. Dondero? 14 15 MS. DANDENEAU: Objection to form. 16 MS. DEITSCH-PEREZ: Form. I mean, if you -- if you -- if you 17 Α. take that last statement out, I mean, it would 18 be difficult for HCMFA to pay back demand notes 19 20 at that time. And it was precisely for that reason 21 Ο. that you told the retail board that -- that the 22 retail -- that the advisors had the full faith 23 24 and backing of Mr. Dondero; correct? 25 MS. DANDENEAU: Objection to form.

Page 206 WATERHOUSE - 10-19-21 1 I mean, yes, as the mouthpiece, I Α. was relaying information. 3 Okay. And you relayed that 4 information with the knowledge and approval of 5 6 Mr. Dondero; correct? 7 MS. DEITSCH-PEREZ: Object to the form. 8 As I stated in the email, I don't 9 Α. believe, and I think I testified I don't 10 believe I had conversations with Mr. Dondero at 11 the time of that board meeting. 12 13 Ο. Did you tell the retail board that the advisors had the full faith and backing of 14 15 Mr. Dondero without Mr. Dondero's prior 16 approval? Yeah, I -- I -- yes, I'm -- like I 17 said, I think I testified earlier, I'm sure I 18 qualified it as well. 19 20 Q. What do you mean by that? MS. DANDENEAU: Objection to form. 21 22 Again -- again, like I said in the Α. email, it has the full faith and backing of Jim 23 24 Dondero unless that has changed. 25 Actually that is not what you said, Q.

Page 207 WATERHOUSE - 10-19-21 1 so let's put the email back up. Α. It is -- it is -- it is in the 3 email. 4 5 Let's put the email back up. You 0. 6 didn't say unless it has changed. You said you 7 believe it hasn't changed; right? Okay. And to my knowledge that 8 Α. hasn't changed, that is what it says. 9 10 That's right. Q. But, again, I mean, that is -- I 11 Α. don't know everything. And I'm not in every 12 13 conversation. I'm not -- to presume that I am, 14 is -- and you have to put myself -- as you 15 started this out, Mr. Morris, I was at home in 16 October of 2020 with COVID -- or, you know, under these COVID times that we described is 17 very difficult. 18 19 We have all been working at home for 20 really the first time ever, undergoing processes, procedures, control environments 21 22 that have been untested, and there is poor communication. 23 24 So I am relaying, as I'm telling you

now, what is in the email. And unless

25

Page 208 WATERHOUSE - 10-19-21 1 something has changed -- to my knowledge, it hasn't changed, but it could have changed. 3 When you say that the advisors have 4 5 the full faith and backing from Mr. Dondero, 6 did you intend to convey that, to the extent the advisors were unable to satisfy their 7 obligations as they become due, Mr. Dondero 8 would do it for them? 9 10 MS. DANDENEAU: Object to the form. MS. DEITSCH-PEREZ: Object to the 11 form. 12 And, John, we have given you a lot 13 14 of leeway here but this does not seem 15 relevant to this case. You seem sort of taking a complete sort of diversion into 16 the allegations and the complaint just 17 filed on Friday, and so I would ask you to 18 19 move on because --20 MR. MORRIS: And I will tell you --I will tell you that I have never read that 21 22 complaint cover-to-cover. I have nothing to do with the prosecution of those claims. 23 24 And this issue that we're talking about right now is related solely to the 25

```
Page 209
                   WATERHOUSE - 10-19-21
 1
          promissory notes that your clients refuse
 3
          to pay.
                 So I'm going to continue to ask my
 4
          questions, and I would ask the court
 5
 6
          reporter to read back my last question.
 7
                             (Record read.)
                MS. DEITSCH-PEREZ: And then I
 8
 9
          believe there were objections to form.
10
                 You can answer the question.
          Q.
          Α.
11
                 Yes.
                 Thank you very much, sir.
12
          Q.
13
                MR. MORRIS: Can we go back to the
14
          other document, please?
15
                Mr. Waterhouse, do you know if this
          Ο.
     document was ever shared with the retail board?
16
                 I don't recall.
17
          Α.
                Did you ever share it with the
18
          Q.
     retail board?
19
20
          Α.
                 I don't recall.
                Did you ever tell the retail board
21
          Ο.
     about the substance of this document?
22
                 I don't recall.
23
          Α.
                Did you ever tell the retail board
24
          Ο.
25
     that Highland had agreed not to make a demand
```

Page 210 WATERHOUSE - 10-19-21 1 against HCMFA until May 2021? Α. I don't recall. 3 Do you know whether anybody on 4 Ο. behalf of the advisors ever informed the retail 5 6 board that Highland had agreed on April 15, 7 2019, not to make a demand against HCMFA under the promissory notes? 8 9 Α. I don't recall. 10 Did you instruct Ms. Thedford or Ο. anybody else responding to the retail board's 11 15(c) inquiry to disclose this document? 12 13 Α. Did I instruct Ms. Thedford or 14 anyone else to -- to -- to produce this, to 15 disclose this document? Is that what you -- I just want to make sure. 16 17 Uh-huh. Ο. Yeah, I don't -- I don't recall. 18 Α. 19 Did you instruct anybody to inform Ο. 20 the retail board, in response to their question as part of the 15(c) process, to -- to tell the 21 22 retail board about Highland's agreement not to make a demand until 2021? 23 24 MS. DANDENEAU: Objection to form. 25 I don't recall. Α.

Page 211 WATERHOUSE - 10-19-21 1 Did you ever inform PwC that HCMFA's 2. O. liabilities exceeded its assets? 3 MS. DANDENEAU: Object to the form. 4 I don't -- I don't think I told 5 Α. 6 I mean, they -- they audited the 7 financial statements. Did -- do you know if anybody on 8 Ο. behalf of Highland ever informed 9 PricewaterhouseCoopers that HCMFA may be unable 10 to repay amounts owing to Highland, should they 11 become due? 12 13 MS. DANDENEAU: Objection to form. Again, I think I testified 14 Α. 15 earlier that -- that this was communicated to the auditors. 16 Ideally --17 Ο. I don't know who exactly did that. 18 Α. I don't recall doing it, but, yeah, it was --19 20 it was communicated. And that is why -- I mean, there is a disclosure in the financial 21 22 statements; right? There is, and that disclosure 23 Ο. 24 relates to the last sentence of this document; 25 correct?

Page 212 WATERHOUSE - 10-19-21 1 Α. Yes. Do you recall looking in the 3 Ο. document and seeing anything that was disclosed 4 5 with respect to the sentence above that? 6 Α. No. 7 Do you know whether anybody on Ο. behalf of Highland ever informed 8 PricewaterhouseCoopers that HCMFA expects that 9 it may be unable to repay amounts due and owing 10 to Highland should they become due? 11 MS. DEITSCH-PEREZ: Object to the 12 13 I think that is the third time. I don't recall. Again, as I said, 14 Α. 15 we -- all of this was given to the auditors. Do you know if Highland received 16 Ο. anything of value in exchange for its agreement 17 18 not to demand payment on amounts owed by HCMFA prior to May 31st, 2021? 19 20 MS. DEITSCH-PEREZ: Object to the That is the second time. 21 form. 22 MS. DANDENEAU: Object to the form. 23 I have answered this question. Α. 24 MR. RUKAVINA: Hold on. Object to 25 legal conclusion. Go ahead.

```
Page 213
                   WATERHOUSE - 10-19-21
 1
 2.
          Α.
                I have answered this question
 3
     before.
                And the answer was no?
 4
          Ο.
 5
          Α.
                I'm not aware.
 6
          Ο.
                Now, this acknowledgment can't
 7
     possibly apply to the two notes that you signed
     on behalf of HCMFA because those notes were
 8
     signed on May 2nd and May 3rd, 2019; is that
 9
     right?
10
                MS. DANDENEAU: Objection to form.
11
          Α.
                Unless there is a drafting error.
12
13
          Q.
                Okay. Are you aware of a drafting
14
     error?
                I'm not aware. I didn't -- I wasn't
15
          Α.
     part of -- I didn't sign this note or this
16
     acknowledgment. I didn't draft it.
17
18
          Ο.
                But you do see it is dated April 15,
     2019; right?
19
20
          Α.
                Yes.
                And this was a document that was
21
          Ο.
     actually included by the advisors in a pleading
22
     they filed with the Court; right?
23
24
                MR. RUKAVINA: Well, I don't know
25
          that so I object to form.
```

```
Page 214
                  WATERHOUSE - 10-19-21
 1
          Q.
                Okay.
                      Let's go to the first page of
     the document and just confirm that.
 3
                MR. AIGEN: Mr. Morris, I just note
 4
 5
          that you already said there was some error
 6
          with the document that is listed as
 7
          exhibit --
 8
                MR. MORRIS: No. No, no, no.
 9
                MS. DEITSCH-PEREZ: Oh, okay.
                MR. MORRIS: What I said is that
10
          there is a few pages that were mistakenly
11
12
          stapled to the end of the document.
13
                MS. DEITSCH-PEREZ: Okay.
14
                MR. MORRIS: There is no problem
15
          with this document.
16
                MS. DEITSCH-PEREZ: And just so
          we're clear that the document -- the pages
17
          that start with defendant's amended answer
18
19
          are not intended to be part of this
20
          document?
                              That's correct.
21
                MR. MORRIS:
22
                MS. DEITSCH-PEREZ: And that the --
          but it is your representation that the rest
23
24
          of the document is -- is -- is correct
25
          because we don't -- we don't have any way
```

```
Page 215
                  WATERHOUSE - 10-19-21
 1
          of verifying that, we're just --
                MR. MORRIS: You do, actually.
 3
          could just go to Docket No. 21-3004.
 4
 5
                MS. DEITSCH-PEREZ: If you want to
 6
          stop this deposition so we can go and pull
 7
          that document up, we're happy to do it. So
          I am just asking you for your
 8
 9
          representation.
10
                             Sure. I gave that.
                MR. MORRIS:
11
                MS. DEITSCH-PEREZ:
                                     Okay.
12
          Q.
                So do you see that this is a
13
     document that was actually filed with the Court
14
     by Highland Capital Management Fund Advisors?
15
          Α.
                No. I get with the first page in
     the section. Maybe I'm looking at the wrong
16
             It says, Highland Capital Management.
17
                Don't worry about it. Don't worry
18
          Ο.
19
     about it.
20
          Α.
                Maybe I went back -- okay.
21
                MR. MORRIS: All right. Can we put
          up on the screen Exhibit 2.
22
23
                (Exhibit 2 marked.)
24
                MR. MORRIS: I think it is
25
          Exhibit 1.
```

```
Page 216
                  WATERHOUSE - 10-19-21
 1
                MS. DANDENEAU: I'm sorry, John, did
          you say Exhibit 2 or Exhibit 1?
 3
                MR. MORRIS: It is Exhibit 2 in the
 4
 5
          binders so it is premarked Exhibit 2. And
 6
          now I'm asking -- right there -- going to
 7
          Exhibit 1 to the document that was marked
          as Exhibit 2.
 8
 9
                MS. DANDENEAU: Got it. In the
10
          binder there is no --
                MS. DEITSCH-PEREZ: There is no
11
          Exhibit 1.
12
                MR. MORRIS: All right. So look at
13
14
          the one on the screen.
15
                Do you see, Mr. Waterhouse, that
          Q.
     this is a promissory note dated May 31st, 2017,
16
     in the approximate amount of $30.7 million?
17
18
          Α.
                Yes.
                And do you see that the maker of the
19
          Ο.
20
     note is NexPoint?
21
          Α.
                Yes.
22
                And that Highland is the payee; is
          Q.
     that right?
23
24
          Α.
                Yes.
25
                Okay. And do you see in Paragraph 2
          Q.
```

Page 217 WATERHOUSE - 10-19-21 1 this is an annual installment note? 3 Α. Can you scroll down. 0. 4 Sure. 5 MR. MORRIS: Can we scroll down --6 yeah, there you go. 7 Right there, yeah. Α. Yes. MR. MORRIS: And can we scroll down 8 to the signature line. 9 And do you recognize that as 10 Mr. Dondero's signature? 11 Α. 12 Yes. 13 Ο. And is this the promissory note that 14 we talked about earlier where NexPoint had made 15 certain payments in the aggregate amount of about 6 to \$7 million against principal and 16 interest? 17 I don't recall discussing the 18 Α. aggregate principal amounts of 6 to \$7 million, 19 20 but -- so I don't -- I don't recall that prior discussion with those amounts. 21 22 All right. Let's take a look. Ο. NexPoint always included this promissory note 23 as a liability on its audited financial 24 statements; right? 25

```
Page 218
                   WATERHOUSE - 10-19-21
 1
          Α.
                 Yes.
                And NexPoint had its financial
 3
          Ο.
     statements audited; isn't that correct?
 4
 5
          Α.
                 Yes.
 6
          Ο.
                And was the process of NexPoint's
 7
     audit similar to the process you described
     earlier for Highland and HCMFA?
 8
                 Yes, it is similar.
 9
          Α.
10
          Q.
                 Okay.
                 MR. MORRIS: Can we put up
11
12
          NexPoint's audited financials and let
13
          everybody know what exhibit number it is,
14
          La Asia?
                MS. CANTY: It is going to be
15
16
          Exhibit 46.
                 (Exhibit 46 marked.)
17
                And do you see, sir, that we've put
18
          Ο.
     up NexPoint Advisors' consolidated financial
19
20
     statements and supplemental information for the
     period ending December 31st, 2019?
21
22
          Α.
                 Yes.
                Did you participate in the process
23
24
     whereby these audited financial statements were
     issued?
25
```

Page 219 WATERHOUSE - 10-19-21 1 2. Α. I didn't participate directly, as I've described before, about the -- the team 3 performing the audit. 4 Do you recall when the audit of 5 Ο. 6 NexPoint's financial statements for the period 7 ending December 31st, 2019 was completed? Α. 8 Yes. And when do you recall it being 9 Q. completed? 10 In January of 2021. 11 Α. Do you know why the 2019 audit 12 Q. 13 report wasn't completed until January of 2021? 14 Α. Yes. 15 Why was the NexPoint audit report Ο. for the period ending 12/31/19 not completed 16 until January 2021? 17 Because we had to deal with working 18 Α. from home from -- with COVID, and on top of all 19 20 of our daily responsibilities and job duties at -- at providing -- at Highland providing 21 22 services to NexPoint, we had to do all of this extra work for a bankruptcy that was filed in 23 24 October of 2019. 25 MR. MORRIS: Can we go to the

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Page 220
                  WATERHOUSE - 10-19-21
 1
          balance sheet on page 3? Okay. Stop right
          there.
 3
                Do you see under the liabilities
 4
 5
     section, the last item is note payable to
     affiliate?
 6
 7
          Α.
                Yes.
                And is that the note that we just
 8
          Ο.
     looked at?
 9
10
                MS. DANDENEAU: Objection to form.
                Withdrawn.
11
          Q.
                Is that the approximately
12
13
     $30 million note that we just looked at that
     was dated from 2017?
14
15
                MS. DANDENEAU: Objection to form.
          Α.
                I believe no.
16
                Okay. You're not aware of any other
17
          Ο.
     note that was outstanding from NexPoint to
18
     Highland as of the end of the year 2019, other
19
20
     than that one $30 million note; right?
                I don't recall.
21
          Α.
22
                And as of the end of 2019, the
          0.
     principal amount that was due on the note was
23
24
     approximately $23 million; right?
25
                MS. DEITSCH-PEREZ: Object to the
```

```
Page 221
                   WATERHOUSE - 10-19-21
 1
          form.
                Approximately.
 3
          Α.
                 And does that refresh your
 4
          Ο.
     recollection that between the time the note was
 5
     executed and the end of 2019, that NexPoint had
 6
 7
     paid down approximately $7 million?
          Α.
                 Yes.
                       If we are just doing the math,
 8
 9
     yes.
                Okav.
                       Did NexPoint complete its
10
          Ο.
     audit from 2020?
11
                 Sorry, you kind of broke up.
12
          Α.
                                                 Do
13
     NexPoint complete?
                 The audit of its financial
14
          Q.
15
     statements for the period ending December 31st,
16
     2020?
17
          Α.
                No.
                No, it's not complete?
18
          Q.
19
                 No, it is not complete.
          Α.
20
                 Did HCMFA complete its audit for the
          Q.
     year ending December 31st, 2020?
21
22
          Α.
                 No.
23
                 MR. MORRIS: Can we go to page 15,
24
          please, the paragraph at the bottom.
25
                 Do you see that NexPoint has
          Q.
```

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WATERHOUSE - 10-19-21
 1
 2.
     included under notes payable to Highland a
     reference to the amounts that were outstanding
 3
     as of the year-end 2019 under the note that we
 4
 5
     looked at just a moment ago?
 6
          Α.
                Yes. Are you talking about the
 7
     second paragraph?
                I'm actually talking about first
 8
          Ο.
     paragraph. Do you understand that the first
 9
     paragraph is a reference to the 2017 note, and
10
     the amounts that were -- the principal amount
11
     that was outstanding as of the end of 2019?
12
13
                MS. DANDENEAU: Objection to form.
14
          John, do you mean the first paragraph of
15
          that page?
16
                MR. MORRIS: No, the first paragraph
          under notes payable to Highland.
17
18
          Α.
                Yeah, I see the paragraph, and
19
     again, this is what I answered earlier.
20
     believe so, just because I don't -- again, this
     is a number in a balance sheet, and without
21
22
     matching it up and seeing the detail with the
     schedule like I kind of talked about for
23
24
     Highland's financial statements, it is a little
     bit more difficult to tie everything in
25
```

Page 223 WATERHOUSE - 10-19-21 1 2. perfectly together. Okay. But you're not aware of any 3 Ο. note that was outstanding at the end of 2019 4 from NexPoint to Highland other than whatever 5 principal was still due and owing under the 6 \$30 million note issued in 2017; correct? 7 Well, it -- I don't -- there is 8 Α. reference in the second paragraph. I don't --9 I don't -- I don't recall what that is 10 referring to, so I don't -- I don't know. 11 Well, if you listen carefully to my 12 Q. question, right, I'm asking about notes that 13 14 were outstanding at the end of 2019, and if we 15 look at the paragraph you just referred to, it says that during the year there were new notes 16 issued totaling \$1.5 million, but by the end of 17 the year, no principal or interest was 18 19 outstanding on the notes. 20 Do you see that? 21 Α. Oh, I do, yes. 22 So does that refresh your Ο. recollection that there were no notes 23 24 outstanding from NexPoint to Highland other than the principal remaining under the original 25

Page 224 WATERHOUSE - 10-19-21 1 \$30 million 2017 note that we looked at a moment ago? 3 Well, we're at the bottom of the 4 Α. 5 page. Is there anything on page 16? 6 Ο. That is a fair question, sure. That 7 is it. Okay. So it appears that that is 8 the only note that is detailed in the notes in 9 the financial statement. 10 And you don't have any memory of any 11 other note other than the 2017 note, right, 12 13 being outstanding as of the end of the year? I deal with thousands of 14 Α. 15 transactions every year. I don't really have a 16 very specific memory for what exactly was outstanding. 17 MR. MORRIS: Why don't we take a 18 19 break now. We've been going for a little 20 while. It's 3:26. Let's come back at 21 3:40. 22 VIDEOGRAPHER: We're going off the 23 record at 3:26 p.m. 24 (Recess taken 3:26 p.m. to 3:39 p.m.) 25 VIDEOGRAPHER: We are going back on

Page 225 WATERHOUSE - 10-19-21 1 the record at 3:39 p.m. All right. Mr. Waterhouse, we -- I 3 Ο. don't think we have a lot more here. 4 To the best of your knowledge and 5 6 recollection, were all affiliate loans and all 7 loans made to Mr. Dondero recorded on Highland's books and records as assets of 8 9 Highland? 10 MS. DANDENEAU: Object to the form, asked and answered. 11 To my knowledge, yes. 12 Α. 13 Q. Okay. Can you recall any loan to 14 any affiliate or Mr. Dondero that was not 15 recorded on Highland's books and records as an 16 asset? Like during my time as CFO? I don't 17 Α. recall. 18 19 How about after the time that you Ο. 20 were CFO? Did you recall that there was a loan by Highland to an affiliate or to Mr. Dondero 21 22 that hadn't been previously recorded on Highland's books as an asset? 23 24 MS. DANDENEAU: Objection to form. 25 Α. I quess I don't understand the

Page 226 WATERHOUSE - 10-19-21 1 I left Highland as of -- I'm not 2. auestion. aware of -- I left Highland in February --3 probably the last day of February of 2021. 4 5 Ο. Okay. 6 Α. I'm not -- I'm not aware of any --7 I'm not aware of anything past that date. Okay. While you were the CFO at 8 Ο. Highland, did Highland prepare in the ordinary 9 course of business a document that reported 10 operating results on a monthly basis? 11 12 Α. Yes. 13 And are you generally familiar with 14 the monthly operating reports? 15 Α. Yeah. You are referring to the 16 reports that we filed to the Court every month? I apologize, I'm not. I'm taking 17 Ο. you back to the pre-petition period. 18 There was 19 a report that I have seen that I'm going to show you, but I'm just asking for your 20 knowledge. 21 22 MR. MORRIS: Let's put it up on the 23 screen, Exhibit 39. 24 (Exhibit 39 marked.) 25 Do you see this is a document that Q.

Case 3:21-cv-00881-X Docume Exhibits 148 Piteme (217/69)/2446 Page 195 of 200 Page ID 54717 Page 227 WATERHOUSE - 10-19-21 1 is called operating results? Α. Yeah, that's the title of it. 3 Okay. And was a report of operating 4 0. results prepared by Highland on a monthly basis 5 6 during the time that you served as CFO? 7 Α. No. Are you familiar with a document of 8 Ο. this type? And we can certainly look at the 9 next page or two to refresh your recollection. 10 I'm just looking at the title. 11 don't really -- again, as I discussed before, I 12 13 don't have any records or documents or emails or appointments or anything that I was able to 14 15 use prior to -- prior to this deposition, so I'm doing the best I can. 16 Okay. You don't need to apologize. 17 I'm just asking you if you are familiar with 18 the document called Operating Results that was 19 prepared on a monthly basis at Highland? 20 MS. DEITSCH-PEREZ: Object to the 21 22 form. If you're not, you're not. 23 Q.

I don't believe this was prepared on

24

25

Α.

a monthly basis.

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Page 228
                   WATERHOUSE - 10-19-21
 1
          Q.
                Okay. Do you see that this one
     is -- is dated February 2018?
 3
          Α.
                Yes.
 4
                Do you have -- do you believe --
 5
          Ο.
 6
     have you ever seen a document that was
 7
     purporting to report operating results for
     Highland?
 8
                MS. DANDENEAU: Objection to form.
 9
10
          Α.
                Yes.
                Okay. And when you say that you
11
          Q.
     don't believe it was produced on a monthly
12
13
     basis, was it produced on any periodic bases to
14
     the best of your recollection?
15
          Α.
                I believe it was -- it was prepared
     on an annual basis.
16
17
          Q.
                Okay.
                MR. MORRIS: Can we look at the next
18
19
          page.
20
                Do you see that there is a statement
     here called: Significant items impacting
21
     HCMLP's balance sheet?
22
23
                And it is dated February 2018.
24
          Α.
                Yes.
25
                Do you recall that there was a
          Q.
```

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- 1 WATERHOUSE 10-19-21
- 2 report that Highland prepared that identified
- 3 significant items impacting the balance sheet?
- 4 A. A report that was prepared.
- 5 Q. Let me ask a better question: Did
- 6 Highland prepare reports to the best of your
- 7 recollection that identified significant items
- 8 that impacted its balance sheet?
- 9 A. Well, so Highland prepared a -- a
- 10 monthly close package. And maybe I'm
- 11 getting -- and -- and maybe change names at one
- 12 time or maybe I'm just -- again, just
- 13 misremembering -- but in that, yes, there is a
- 14 page that would detail just changes in -- you
- 15 know, just changes month over month on the
- 16 balance sheet.
- 17 Q. Okay. And maybe it is my fault.
- 18 Maybe I didn't know the proper name for it.
- 19 But let's use the phrase "monthly close
- 20 package."
- 21 Did Highland prepare a monthly close
- 22 package in the ordinary course of business
- 23 during the time that you served as CFO?
- MS. DANDENEAU: Objection to form.
- 25 A. Yes.

Page 230 WATERHOUSE - 10-19-21 1 And did the monthly close package Ο. that Highland prepared include information 3 concerning significant items that impacted 4 Highland's balance sheet? 5 Yes, it had a page like that is --6 Α. 7 that is on the screen that detailed items like -- of that nature. 8 And do you know who -- was there 9 Q. anybody at Highland who was responsible for 10 overseeing the preparation of the monthly 11 reporting package? 12 13 Α. That would have been -- again, it varies over time during my tenure as CFO. 14 15 It -- it varied over -- over time, but -- but 16 typically a -- a corporate accounting manager. And who were the corporate 17 Ο. accounting managers during your tenure as CFO? 18 It would have been Dave Klos and 19 Α. 20 Kristin Hendrix. And did the corporate accounting 21 Ο. 22 manager deliver to you drafts of the monthly close package before it was finalized? 23 24 Sometimes. Α. 25 Was that the practice even if there Q.

Page 231 WATERHOUSE - 10-19-21 1 were exceptions to the practice? The practice meaning that they 3 Α. sometimes lured them to me? 4 5 That that was the expectation even Ο. 6 if circumstances prevented that from happening 7 from time to time. MS. DEITSCH-PEREZ: Object to the 8 form. 9 I -- I would say it started out that 10 way but over the years it -- it was not 11 enforced. 12 13 Okay. So you were -- you reviewed 14 and approved monthly -- monthly reporting 15 packages for a certain period of time and then 16 over time you stopped doing that. 17 Do I have that right? MS. DANDENEAU: Objection to form. 18 Yes, I mean, if you're talking about 19 Α. 20 a formal meeting where we sit down and go through and approve it. I would say that was 21 standard practice a decade -- you know, early 22 And as time went on that -- that -- that 23 24 practice wasn't followed. 25 Okay. Q.

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1 WATERHOUSE - 10-19-21
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- A. And, quite frankly, I don't even
- 3 know if these were -- these were sent to me
- 4 even in any capacity.
- 5 Q. What was the purpose of preparing
- 6 the monthly reporting package -- withdrawn.
- 7 What was the purpose of preparing
- 8 the monthly close package?
- 9 MS. DEITSCH-PEREZ: Object to the
- 10 form.
- 11 A. The -- the original purpose was so
- 12 that it would just -- it would be a report that
- 13 was reviewed monthly with senior management.
- 14 O. Who was included in the idea of
- 15 senior management?
- 16 A. You know, I think originally when
- 17 this was conceived that would have been like
- 18 Jim Dondero and Mark Okada.
- 19 Q. Were monthly reporting -- withdrawn.
- 20 Were monthly close packages prepared
- 21 to the best of your knowledge until the time
- 22 you left Highland?
- 23 A. To my knowledge -- I don't know,
- 24 actually. I mean, to my knowledge, I believe
- 25 it was being -- that was still being done. I